

Response to City Council's Directions Arising from the Toronto Local Appeal Body Chair's 2020 Annual Report

Date: March 11, 2022

To: Planning and Housing Committee

From: Deputy City Manager, Community & Social Services

Wards: All

SUMMARY

This report responds to City Council's direction to the City Manager to report back to the Planning and Housing Committee by the first quarter of 2022 on the following:

1. The operations of the Toronto Local Appeal Body (TLAB) relative to its original intent, with public engagement, with the intended outcome of simplifying the hearing process and increasing public participation.
2. Extending compensation to the Chair and Vice-Chair for hearing time in Review Requests that is currently afforded to TLAB Members.
3. For the Chair to be represented and included in the preparation of the annual TLAB budget, in consultation with Court Services.
4. Amending the Fees, Licences, and Charges By-law to incorporate a 'Toronto Local Appeal Body Review Request Fee' in the amount of \$300 per property address.

The TLAB is an independent, quasi-judicial tribunal established through City of Toronto Municipal Code Chapter 142, Local Appeal Body, the City of Toronto Act, and relies on other provincial legislation. The City of Toronto Act allows for the creation of a local appeal body for land-use planning disputes related to applications under Sections 45 and 53 of the Planning Act.

TLAB Member responsibilities are outlined in Municipal Code Chapter 142. They include conducting mediations, presiding over hearings, and rendering a written decision on hearings based on the evidence presented in accordance with the TLAB's Rules of Practice and Procedure and the Statutory Powers Procedure Act. TLAB Chair responsibilities were adopted by City Council in 2016 through the TLAB Governance Structure. The Chair's responsibilities are associated with the adjudication process, Member training and development, representing the TLAB, and annual reporting to Committee and Council on the TLAB's activities.

This report recommends that City Council approve an increase in the TLAB Member composition from ten to fourteen part-time Members including a Chair and Vice-Chair. The purpose of this increase is to alleviate workload pressures on individual TLAB Members in order to promote timely outcomes. It is important to note that any recruitment of additional TLAB Members in 2022 would need to be completed before Council's final meeting in July 2022. If this timeline is not met, the City would not be able to bring forward additional TLAB Member nominees until Q2 2023 due to the municipal election and recruitment appointment priorities.

This report also recommends that remuneration for Review Request hearing time be given to the Chair and Vice-Chair effective April 1, 2022.

RECOMMENDATIONS

The Deputy City Manager, Community & Social Services recommends that:

1. City Council approve an increase in the TLAB Member composition from ten (10) to fourteen (14) part-time Members including a Chair and Vice-Chair.
2. City Council approve a half-day per diem rate for Review Request hearings for the Chair and Vice-Chair of the Toronto Local Appeal Body effective April 1, 2022.

FINANCIAL IMPACT

Increasing the TLAB Member composition and approving Chair and Vice-Chair Review Request remuneration for hearing time has a minimal financial impact to the City which can be accommodated within Toronto Court Services Council Approved 2022 Operating Budget.

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

DECISION HISTORY

At its meeting on June 8, 2021, City Council received for information the 2020 Annual Report from the Chair of the Toronto Local Appeal Body, from the Director, Court Services. City Council directed the City Manager to report back on items 1, and 3a-c as outlined in this report. The link to City Council's decision is available at: <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2021.PH23.13>

At its meeting on May 20, 2021, Planning and Housing Committee received a report from the City Manager which 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. The link to Planning and Housing Committee's decision is available at:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2021.PH23.12>

At its meeting on March 7, 2019, City Council adopted harmonized remuneration rates for members of the City's nine Adjudicative Boards (the City's tribunals) effective April 1, 2019. This included rates of remuneration for full-day hearings, half-day hearings, and annual stipends for public Members, and for chairs. The link to City Council's decision is available at:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2019.EX2.5>

At its meeting on July 23, 2018, City Council approved an increase in the Toronto Local Appeal Body Member composition from seven to ten part time Members including the Chair and amended the remuneration policy to adopt the proposed annual stipend of \$15,000 for the Vice Chair. The link to City Council's decision is available at:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2018.EX36.10>

At its meeting on March 31, and April 1 2016, City Council adopted the Local Appeal Body Governance Structure in Attachment 1 to the report (February 24, 2016) from the City Manager, directed that a separate Toronto Municipal Code Chapter be established for the Local Appeal Body substantially as provided for in Attachment 2 to the report (February 24, 2016) from the City Manager, authorized the City Solicitor to bring forward a By-law implementing the Local Appeal Body once a series of activities were completed to the satisfaction of the City Manager, approved a \$300 appeal fee per appellant per hearing, and established a Local Appeal Body Nominating Panel, composed of three citizen members appointed by City Council on recommendation of the City Clerk, to short-list, interview and recommend candidates directly to City Council for appointment to the Local Appeal Body. The link to Council's decision is available at:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2016.EX13.1>

At its meeting on July 8-11, 2014, City Council approved the establishment of a Local Appeal Body (LAB) and directed the City Manager to report to Executive Committee on the governance, administration and fees to implement the LAB and requested the City Manager to give consideration to a minimum fee for all applicants, and a fee at least equal to the fee paid to the Committee of Adjustment for appeals initiated by Committee of Adjustment applications. The link to Council's decision is available at:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2014.PG33.14>

COMMENTS

1) Toronto Local Appeal Body Operations Relative to its Original Intent

In 2016, City Council approved eight Guiding Principles for the Toronto Local Appeal Body (TLAB) based on public consultations. This section of the report considers whether the TLAB's current operations are consistent with these Guiding Principles and whether further public engagement is required to simplify the hearing process in order increase public participation.

Guiding Principle 1: Appointment – Members will be appointed using a fair and impartial recruitment process where the most qualified candidates are appointed by City Council.

At its meeting on March 31 and April 1, 2016, City Council established a Local Appeal Body Nominating Panel composed of three public members, appointed by City Council on recommendation of the City Clerk. The Local Appeal Body Nominating Panel was responsible for short-listing, interviewing, and recommending candidates directly to City Council for appointment to the TLAB.

At its meeting on December 4, 2018, City Council established a Tribunals Nominating Panel to screen, interview and recommend candidates to City Council for appointment to the City's Quasi-Judicial Bodies and Tribunals, including the Toronto Local Appeal Body. The Tribunals Nominating Panel is a roster composed of up to nine public members. Members from the roster convene in panels as determined by the City Clerk.

The panel responsible for recommending candidates for TLAB is comprised of three members and is called the Nominating Panel – Toronto Local Appeal Body. The fairness and impartiality of the process has been ensured by the Tribunals Nominating Panel which conducts proceedings in accordance with Toronto Municipal Code Chapter 27 and the Public Appointments Policy with respect to appointments. In particular, the Tribunals Nominating Panel considers the following in recommending candidates:

- Selecting applicants who together cover a range of the Council approved qualifications;
- Representation of Toronto's diversity, including age, gender, sexual orientation, ethnicity, Indigenous/Aboriginal identity, race, disability and geographic location; and
- Balancing of experienced and new members

According to the City Clerk's Office, 220 applications have been received for the TLAB since it was established in 2017. Of these applicants, 29 interviews were conducted by the Nominating Panel and 19 candidates have been recommended to City Council for appointment. All 19 candidates were subsequently appointed by City Council.

Guiding Principle 2: Qualifications – Members will have reputable adjudicative experience, familiarity with land use planning and planning law, ability to make sound, balanced decisions, and will be free of conflicts of interest.

All past and present Members of the TLAB have extensive experience in the areas that are relevant to TLAB operations: land-use planning, dispute resolution, and planning and development law. Several Members have experience sitting on and/or appearing before administrative tribunals including the Committee of Adjustment and the former Ontario Municipal Board. In 2017, the Ontario Municipal Board became the Local Planning Appeal Tribunal, which was then amalgamated into the Ontario Land Tribunal on June 1, 2021.

The qualifications of TLAB Members demonstrate their adjudicative experience, familiarity with land use planning and planning law, and supports their ability to make sound, balanced decisions. As part of the interview process, the City Clerk's Office asks

candidates to complete an Eligibility and Conflict of Interest Disclosure Statement and to disclose any personal interests that may conflict with the interests of the TLAB.

Guiding Principle 3: Remuneration – Members will be remunerated at a level that ensures they are able to effectively perform their role and function.

Members of the TLAB are paid in accordance with the City's Remuneration Policy for City Agencies, Boards, Commissions, and Corporations. The rate of pay for hearing time is consistent with per diems received by the Compliance Audit Committee and part-time members of provincial adjudicative tribunals and regulatory agencies.

The Province of Ontario has adopted a standardized per diem rate of \$472 to \$744 for full-day hearings. According to the Province's Agencies and Appointments Directive for tribunal remuneration, per diems may be paid for time spent on formal business approved by the provincial agency chair on a case by case basis. This may include attendance at, or provision of training, attendance at meetings, and preparation time. The provincial directive on tribunal remuneration rates does not provide a separate remuneration rate for decisions. It also does not provide for half-day hearing rates or annual stipends for Executive Chairs, Chairs, Associate Chairs, Vice-Chairs, or Members.

By comparison, TLAB Members receive:

- Full day hearing per diems of \$600
- Half day hearing per diems of \$400
- A \$1,500 annual stipend for TLAB Members
- A \$15,000 annual stipend for the Vice-Chair
- A \$60,000 annual stipend for the Chair

TLAB Members also receive remuneration for decisions, which is not common in other Canadian quasi-judicial tribunals. The current remuneration for TLAB decisions is \$200. City Council approved a variable decision rate structure with a maximum of \$400 through the 2022 budget process. This structure reflects the level of effort required to produce decisions.

Remuneration rates for the TLAB are the highest in the City and remain consistent with the City's Remuneration Policy. They also align with provincial comparators. This has resulted in rates that enable Members to effectively perform their role.

Guiding Principle 4: Oversight and Accountability – The TLAB will operate as an independent decision-making body free from influence by outside parties, and subject to appropriate legislation and policies.

The TLAB operates as an independent decision-making body that is free from political interference. As an administrative tribunal, the TLAB is subject to City's Code of Conduct for Members of Adjudicative Boards and is overseen by the Integrity Commissioner. Hearings are conducted in accordance with all relevant provincial legislation including the Statutory Powers Procedures Act, the Municipal Conflict of Interest Act, and the Municipal Freedom of Information and Protection of Privacy Act.

Guiding Principle 5: Practices and Procedures – The TLAB will determine its own hearing practices and procedures in accordance with relevant legislation such as the Statutory Powers Procedure Act and COTA.

Following enactment of Municipal Code Chapter 142, consideration of practices and procedures at public meetings, and consultation with the TLAB's external counsel, the TLAB formally adopted Rules of Practice and Procedure and administrative policies. In 2019, the TLAB held public consultations on its Rules and made changes in consideration of feedback received.

The TLAB's Rules embody all legislative requirements outlined in the Statutory Powers Procedure Act and the City of Toronto Act. The Rules are available on the City's website. An online public guide further explains TLAB processes and procedures for the general public.

Guiding Principle 6: Structure and Relationship with the City – The TLAB will be structured to provide efficient and timely due process with administrative support from the City.

When City Council authorized the creation of the TLAB, one of the objectives was to structure the appeal body to provide efficient and timely due process. For example, the TLAB operates as a paperless tribunal with a reliance on technology throughout the appeal process. A Steering Committee with representatives from City Planning, Legal Services, City Clerk's Office, and Court Services led the TLAB implementation project. Court Services continues to provide administrative support to the TLAB as codified in Section 142.7 of Municipal Code Chapter 142.

Through practice directions and decisions made at business meetings, the TLAB has established practices aimed at supporting efficient and timely due process. An example is the TLAB's establishment of a practice to generally limit minor variance hearings to one day and combined consent and minor variance hearings to two days.

City Council further supported efficient and timely due process by increasing the number of TLAB Members from seven to ten in 2018. To alleviate individual workloads, this report recommends that City Council approve an increase in TLAB Member composition from ten to fourteen part-time Members including a Chair and Vice-Chair. Ongoing efforts are in place to fill Member vacancies when terms expire and mid-term resignations occur, however the appointment process takes approximately three months to complete.

While the TLAB is structured to provide efficient and timely due process, public deputations at business meetings reveal frustration at the complexity of TLAB proceedings and dissatisfaction with decision turnaround times. A further increase in tribunal members and a reduction in the number of hearings per member will alleviate the workload of individual TLAB Members and is expected to result in more timely outcomes. Additional opportunities exist should the TLAB decide to adopt simplified rules or processes such as delegated authority for simple processes such as first time adjournments or withdrawal of appeals.

Guiding Principle 7: Costs of Implementing and Maintaining the LAB – The City will provide adequate start-up and ongoing operating funding to the TLAB to ensure that it functions effectively and independently.

The City allocates operating funding to the TLAB through the annual budget process. The TLAB Chair is consulted on the funding needs of the TLAB every year. These consultations allow staff make informed decisions about the annual budget submission and allow the Chair to fulfill its role as lead representative and spokesperson for the TLAB including completing their annual report.

The provision of ongoing operating funding by the City through consultation with the Chair is consistent with the roles and responsibilities of City staff and the TLAB outlined in Municipal Code Chapter 142 and the Governance Structure adopted by City Council. It is also consistent with the Guiding Principles that clarify the roles of the TLAB, City staff, and City Council in supporting the mandate of the TLAB.

Guiding Principle 8: Appeal Filing Fees – In establishing fees for the TLAB, Council will be guided by the legislation, the City's User Fee Policy and principles of natural justice.

The fees associated with the TLAB are a balance between access to justice and cost recovery. In a June 16, 2015 report to City Council, staff recommended a \$1,000 appeal filing fee which would fund 15% of the operating cost, requiring an 85% operating cost subsidy. This was based on a review and analysis of fees for land use bodies and other similar administrative tribunals, including a case law review. City Council approved an appeal filing fee of \$300 to make the service accessible to the general public.

The Ontario Land Tribunal (OLT) hears minor variance and consent appeals in other Ontario municipalities. By comparison, the OLT charges a \$400 filing fee, plus an additional \$25 for each additional variance or consent appeal filed by the same appellant against connected appeal or consent applications. This fee structure is the same regardless of whether the appellant is a corporation, a registered charity, a non-profit rate payers' association, or a private citizen.

City Council's adoption of a \$300 appeal filing fee adheres to the City's User Fee Policy, is consistent with prevailing legislation, and reflects the principles of natural justice in allowing the persons affected by a Committee of Adjustment decision a reasonable opportunity to be heard.

Conclusion

The TLAB currently operates in accordance with the Guiding Principles as approved by City Council in 2016. The TLAB has consulted the general public on its Rules of Practice and Procedure and related administrative processes. Staff will continue to encourage this type of community engagement in order to improve the accessibility and efficiency of TLAB services.

An increase in TLAB Member composition from ten to fourteen part-time Members including a Chair and Vice-Chair as recommended in this report will alleviate workloads on individual Members and is expected to produce timelier outcomes. The TLAB may wish to review its Rules and adopt simplified processes to improve efficiency and due process.

2) Compensation for the Chair and Vice-Chair for Hearing Time in Review Requests

The City's Remuneration Policy for City Agencies, Boards, Commissions and Corporations, which includes the City's administrative tribunals, recognizes an appointee's level of responsibility, their qualifications, the frequency of meetings, and amount of preparation required. Members receive remuneration to recognize their dedication to the TLAB's business. In addition to receiving annual stipends and remuneration for hearing time and decisions, TLAB Members are also eligible for refunding of business-related expenditures.

A Review Request is a review of a final Decision and Order by a TLAB Member. It is only available to Parties, who must comply with the provisions of Rule 31 of the TLAB Rules of Practice and Procedure. When the TLAB was first implemented in 2017, Review Requests were completed by the TLAB Chair only. In 2019, Rule 31 was revised to allow the TLAB Chair to delegate Review Requests to any Member, including the Vice Chair.

Staff reviewed TLAB Member compensation since the TLAB was established on May 3, 2017 to determine how the Chair, Vice-Chair, and Members have been compensated for hearing time and decisions related to Review Requests. In 2018, the Chair received decision payments for their consideration of Review Requests. Since the change to Rule 31 in 2019, Members have been paid for hearing time and decisions related to Review Requests. The Chair and Vice-Chair have not been paid for hearing time but have received a decision payment only for this function.

A Review Request is a discrete written hearing. TLAB Members tasked with completing such reviews must complete a detailed analysis of materials submitted during the original hearing and prepare a Review Request decision. Given that this function is a separate hearing process, and in the interest of establishing consistency, this report recommends that as of April 1, 2022, the Chair and Vice-Chair of the TLAB receive the half-day per diem rate for Review Request hearings.

3) Consultation with the Chair in the Preparation of the TLAB's Annual Budget

Municipal Code Chapter 142 and the Governance Structure adopted by Council in 2016 outline the roles and responsibilities of the TLAB Chair, TLAB Members, and City staff. TLAB Members are responsible for conducting mediations, presiding over hearings and rendering a written decision on hearings based on the evidence presented in accordance with the TLAB's Rules of Practice and Procedure and the Statutory Powers Procedure Act. The Chair's responsibilities include ensuring the quality of decisions, representing the TLAB, coordinating Member training, and reporting on TLAB performance metrics. Court Services Division is responsible for providing administrative support to the TLAB. This is consistent with the Secretariat and administrative support provided to other administrative tribunals by City staff.

City staff have consulted with the TLAB Chair on the TLAB's annual budget requirements since the TLAB was established in 2017. This is consistent with the City's obligations under the Relationship Framework between the TLAB and the City of

Toronto approved by the TLAB on June 14, 2017. Staff consult with the Chairs of other adjudicative tribunals in a similar manner to better understand the tribunals' needs from a budget perspective.

To support the 2022 budget process, a meeting was held with the TLAB Chair and members of Court Service's Tribunal Operations and Finance & Administration staff on June 25, 2021. The purpose of this meeting was to obtain feedback from the Chair regarding additional needs for the TLAB. This feedback was taken into consideration by Court Services staff in the development of the 2022 budget as staff are ultimately responsible for providing the TLAB with ongoing operational funding to ensure that the TLAB functions effectively and independently. Budget requests from the June 25, 2021 meeting are reflected in Toronto Court Services Council Approved 2022 Operating Budget. An example is the addition of a fifth business meeting to address the TLAB's business and increase opportunities for public participation.

City staff are recommending that the current method of engagement with the TLAB Chair related to the annual budget continue. This method of consultation is consistent with the roles and responsibilities of staff and the Chair approved by City Council, and the Relationship Framework approved by the TLAB. Court Services is committed to the current method of engagement in future years to ensure that budget requests from the TLAB Chair on behalf of the TLAB are considered.

4) Amend Fees, Licenses and Charges By-law to incorporate a Toronto Local Appeal Body Review Request Fee

Under Rule 31 of the TLAB's Rules of Practice and Procedure, a Party may request that the Chair review a final decision or final order of the TLAB. As the Chair's 2020 Annual Report notes, this is a right offered under provincial enabling legislation. The report also notes that the TLAB received a total of seven Review Requests in 2020 which represents a significant reduction in the total of twenty-three received in 2019, and responding to these requests typically requires significant resources.

It is important to note that 2019 was a transitional year where the TLAB revised its Rule 31 to make more types of decisions eligible for a Review Request. Rule 31 has since been updated to reduce the eligibility criteria. There are three Review Request decisions pending for 2020, and one Review Request decision pending for 2021.

The Chair's 2020 Annual Report suggests that some 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 TLAB's 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 (65%) were dismissed in 2019, confirming the TLAB's original decision, as per the annual report. In 2020, seven of 10 Review Requests (70%) were dismissed and three are pending.

Currently, there is no fee for a Review Request under Rule 31 of the TLAB's Rules of Practice and Procedure. City Council could add a fee by amending the Fees and

Charges bylaw. The addition of a new fee is not recommended as the TLAB was created to make appeals more accessible. 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.

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SIGNATURE

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