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Item No. 12.1.1
Executive Standing Committee
February 24, 2020

TO: Mayor Savage and Members of Halifax Regional Council

SUBMITTED BY: - Original Signed -
Jacques Dubé, Chief Administrative Officer

DATE: January 2, 2020

SUBJECT: Revision of Taxi Appeal Process

ORIGIN

September 24, 2019 Regional Council Motion:

That Halifax Regional Council request a staff report to recommend appropriate structure, composition and operation of an arm's length external Committee to adjudicate appeals of the appealable decisions of the Licensing Authority under the Regulations of Taxis and Licenses (By-law T-1000).

LEGISLATIVE AUTHORITY

See Attachment A.

RECOMMENDATION

It is recommended that the Executive Standing Committee recommend that Halifax Regional Council direct the CAO to draft amendments to By-Law T-1000, *Respecting the Regulation of Taxis, Accessible Taxis and Limousines*, and any other necessary amendments, to enable appeals to be heard by an arm's length committee consistent with the structure, composition, and operation outlined in Table 1 of this report.

BACKGROUND

The *Halifax Regional Municipality Taxi and Limousine By-law* (the "Taxi By-law") was enacted by Regional Council on October 23, 2012. The Taxi By-law empowers the Licensing Authority to make licensing decisions at its discretion. This includes the power to issue, renew, suspend, cancel, and revoke.

A licensee may appeal the decision of the Licensing Authority to the HRM Appeals Committee. The Appeals Committee is established pursuant to By-law A-100, the *Appeals Committee By-Law*. It consists of six HRM Councilors, as appointed by Council. The Appeals Committee hears appeals for a variety of decisions made by HRM staff, including taxi licensing. There are few taxi licensing appeals heard each year. In 2019 there were three appeals, in 2018 there was one appeal, and in 2017 there were two appeals.

An appeal hearing follows the procedure for public hearings set out in Administrative Order One. Staff makes a presentation, committee members have the opportunity to ask staff a question, then the appellant has ten minutes to speak. The committee then has the authority to confirm or vary the decision of the License Authority, order that a license be revoked or surrendered, or order that a license be granted or reinstated, with or without conditions.

DISCUSSION

Legislative Authority

There is legislative authority to support an arm's length committee to hear appeals from the revocation of taxi licenses. The *Motor Vehicle Act* (the "MVA"), and incoming *Traffic Safety Act*, authorize the traffic authority to revoke any license issued under the Taxi By-law, provided that the appeal may be taken to the council of the municipality, or the police commission or other committee specified in such regulation or by-law. The *Charter* permits Council to appoint persons who are not Councilors to a committee and establish a process for doing so.

Cross Jurisdictional Research

The following are examples of the structure of appeal committees in other Municipalities:

i. Toronto

The Toronto Licensing Tribunal is a quasi-judicial adjudicative body to which the Toronto City Council has delegated various licensing decisions. The Tribunal is composed of seven members of the public, all of whom currently have law degrees. The term for public members is four years. The Civic Appointments Committee (also made up of members of the public) considers applications for the Licensing Tribunal and makes a recommendation to Council on appointments.

The chair receives an annual retainer of \$25,000, plus full-day per diem of \$460 and half-day remuneration (3.5 hours or less) of \$275 for attendance at hearings, business meetings and training.

Tribunal members receive an annual stipend of \$1,500, plus full-day per diem of \$460 and half-day remuneration (3.5 hours or less) of \$275 for attending hearings, business meetings, and training. Members receive a \$50 payment for preparing and submitting a written reason for decision. Total remuneration paid for the Licensing Tribunal in 2017 was approximately \$70,000.00.

ii. Mississauga

The Mississauga Appeal Tribunal is composed of five members of the public and is supported by one outside legal counsel. It is not a requirement that the members of the appeal tribunal have legal experience, but it is considered, along with experience as an adjudicator or appeal board member.

The Appeal Tribunal members receive compensation of \$50.00 for a half day hearing and \$100.00 for a full day. There is a small budget for the Mississauga Appeal Tribunal to cover honorarium, parking, and refreshment. The cost of the external legal counsel is paid for out of the Legal Services Department budget.

iii. Ottawa

The Ottawa Property Standards and License Appeal Committee hears licensing decisions for Vehicles-for-hire in Ottawa. The Committee is composed of five members that are appointed for terms of four years. Law degrees are not required for committee members but currently all members have a legal background. All five members of the committee attend hearings along with a By-Law and Regulations staff member and a legal representative from the City of Ottawa. An external legal counsel is available on retainer upon request.

An honorarium of \$100.00 per month is paid to each member. If more than two appeals happen in a month, and additional \$50 per appeal is paid. The budget for the committee varies each year, but in 2018 honorarium amounted to approximately \$5,000.00 for one Vehicle for Hire License Appeal and 28 other property standards and business licensing appeals.

iv. London

All appeals pursuant to London's Vehicle for Hire By-Law are heard by a Hearings Officer. The Hearings Officer is delegated quasi-judicial and legislative authority under various by-laws and is required to have knowledge and prior experience in administrative law, able to carry out a fair and impartial hearing, and able to write a clear and concise decision.

There are currently four people appointed as Hearing Officers, though each appeal is only heard by one person. There is no compensation for the appointed Hearing Officers, and the costs of the hearing are absorbed by the Clerk's Office budget. There is a \$100.00 administration fee per appeal to assist with such costs. The process was adopted by the City of London in 2011 and has been considered a success, with hearings heard in a timely and efficient manner and no hearing appealed for judicial review. There have been 14 Vehicle for Hire Appeals heard since its inception in 2011, and 109 hearings total.

v. Winnipeg

The Winnipeg *Vehicle for Hire By-Law* creates a Vehicles for Hire Appeal Board consisting of five members of the public. Three members sit on each hearing panel. Members are appointed for a two year term, on off-setting years, so there is continuity on the Appeal Board. There is no requirement that members have a law degree, and currently only one of the five is a lawyer.

Members receive remuneration as follows:

- (a) Chair and Vice Chair:
 - (i) \$190.00 for appeals or meetings of four hours or less; and
 - (ii) \$336.00 for appeals or meetings of more than four hours in length;

- (b) other members:
 - (i) \$109.00 for appeals or meetings of four hours or less; and
 - (ii) \$192.00 for appeals or meetings of more than four hours in length.

The Vehicle for Hire Appeal Board has heard approximately 20 hearings since March 1, 2018. There is not a separate budget for the Appeal Board, and there is a \$500.00 administration fee for appeals to be heard to help offset the cost of the hearing. The Vehicle for Hire appeal Board came into effect on February 28, 2018 and the response has been positive. As the members of the Appeal Board have varying backgrounds, they take a view of assessing the risk for all citizens in making decisions and apply an impartial review of both the City's position and that of the appellant.

Recommended Structure

Based on the cross-jurisdictional research, it is recommended that Halifax adopt a similar structure as London which has a single appeal officer hearing taxi license appeals. By appointing three people to the Taxi License Appeal Committee and having one person hear an appeal, hearings can be held in a timely and efficient manner. Having a panel of citizens hear each appeal would increase commitment requirements from members of the public and lead to potential delays with respect to scheduling.

Although many jurisdictions have adopted a quasi-judicial approach to the appeal hearing, including the submission of evidence, witnesses, cross-examination, etc., it is recommended that HRM continue its current hearing process as set out in Administrative Order One. This process allows for procedural fairness and affords the appellant the opportunity to present his or her case without the complexities of a quasi-judicial process.

The Taxi License Appeal Committee would operate separate from the current Appeals Committee.

Table 1: Recommended Structure of the Taxi License Appeal Committee

Composition	<ul style="list-style-type: none">• Up to three people appointed as Taxi Appeal Officer• One Taxi Appeal Officer per appeal
Term	<ul style="list-style-type: none">• Three years per Taxi Appeal Officer
Qualifications Required	<ul style="list-style-type: none">• Knowledge and prior experience in Administrative Law• Ability to carry out a fair and impartial hearing• Excellent written and oral communication skills
Honorarium	<ul style="list-style-type: none">• \$250.00 per Taxi Appeal Officer per hearing
Authority	<ul style="list-style-type: none">• The Taxi License Appeal Committee can only make a decision that the Licensing Authority can, including:<ul style="list-style-type: none">○ Confirming or varying the decision of the License Authority○ Ordering that a license be revoked or surrendered○ Ordering that a license may be granted or reinstated, with or without conditions
Operation	<ul style="list-style-type: none">• The Taxi License Appeal Committee will be supported by the Municipal Clerk's Office and one lawyer from Legal Services• All appeals will follow the procedure set out in Administrative Order One

FINANCIAL IMPLICATIONS

The financial impact of this report is anticipated to be low. With a small honorarium of \$250.00 per person per hearing and few hearings each year, the additional cost of the Taxi License Appeal Committee would be less than \$1,000.00 per year and would be absorbed in the budget for Legal, Municipal Clerk, and External Affairs. Staff support for each appeal hearing would be an additional cost pressure in the 2020/21 operating budget for Legal, Municipal Clerk, and External Affairs.

RISK CONSIDERATION

There are no significant risks associated with the recommendations in this report.

COMMUNITY ENGAGEMENT

There has been no community engagement with respect to this report.

ENVIRONMENTAL IMPLICATIONS

There are no anticipated environmental implications related to the report recommendation.

ALTERNATIVES

1. Halifax Regional Council may direct staff to draft amendments to By-Law T-1000, *Respecting the Regulation of Taxis, Accessible Taxis and Limousines*, and any other necessary amendments, to enable appeals to be heard by an arm's length committee, with a structure and composition different to that outlined in Table 1 of this report.

ATTACHMENTS

Attachment A – Legislative Authority

A copy of this report can be obtained online at halifax.ca or by contacting the Office of the Municipal Clerk at 902.490.4210.

Report Prepared by: Meg MacDougall, Solicitor, 902.490.2034

Attachment A – Legislative Authority

The *Motor Vehicle Act*, RSNS 1989, c. 293:

Regulation and licensing by municipal by-law

305 (1) The council of a city, town or municipality may make regulations or by-laws regulating and licensing:

[...] b) persons transporting for hire by means of any vehicle, passengers or goods within the boundaries of said city, town or municipality except where such persons are public utilities as defined in the *Public Utilities Act* or are motor carriers who are required to be licensed under the *Motor Carrier Act*,

(c) the vehicles referred to in clause (b).

(2) Such regulations or by-laws may

[...] (e) authorize the traffic authority or other official to revoke any license issued under such regulations or by-laws but an appeal from any revocation so authorized may be taken to the council of the city, town or municipality or to the police commission or other committee specified in such regulations or by-laws;

The *Halifax Regional Municipality Charter*, SNS 2008, c.39:

Standing, special and advisory committees

21 (1) The Council may establish standing, special and advisory committees.

(2) Each committee shall perform the duties conferred on it by this Act, any other Act of the Legislature or the by-laws or policies of the Municipality.

(3) The Council may appoint persons who are not members of the Council to a committee and may establish a procedure for doing so.

(4) A committee shall operate in accordance with the procedures provided in this Act and the procedural policy for the Council applies to committees unless the Council, by policy, decides otherwise.

(5) A member of a committee established by the Council who is a Council member is not entitled to additional remuneration for serving on the committee but may be reimbursed for expenses incurred as a committee member.

(6) A committee member who is not a Council member may be
(a) paid an annual honorarium for serving on the committee, as determined by the Council by policy, and an honorarium may be a different amount if the person is chair of a committee and honorariums may differ for different committees; and

(b) reimbursed for expenses incurred as a committee member.

188 (2) Without restricting the generality of subsection (1) but subject to Part VIII, the Council may, in any by-law

(a) regulate or prohibit;

- (b) regulate any development, activity, industry, business, animal or thing in different ways, divide each divide each of them into classes and deal with each class in different ways;
- (c) provide that in a prosecution for violation of a by-law, evidence that one neighbour is disturbed is prima facie evidence that the neighbourhood is disturbed;
- (d) adopt by reference, in whole or in part, with changes that the Council considers necessary or advisable, a code or standard and require compliance with it;
- (e) provide for a system of licenses, permits or approvals, including any or all of
 - (i) establishing fees for licenses, permits or approvals, including fees for licenses, permits and approvals that may be in the nature of a reasonable tax for the activity authorized or for the purpose of raising revenue, which fees may be set or altered by policy,
 - (ii) prohibiting any development, activity, industry, business or thing until a license, permit or approval is granted,
 - (iii) providing that terms and conditions may be imposed on a license, permit or approval, the nature of the terms and conditions and who may impose them,
 - (iv) setting out the conditions that must be met before a license, permit or approval is granted or renewed, the nature of the conditions and who may impose them,
 - (v) providing for the duration of licenses, permits and approvals and their suspension or cancellation for failure to comply with a term or condition or the by-law or for any other reason specified in the by-law;
- (f) where decision making is delegated by by-law to a person or committee other than the Council, provide for an appeal of the decision, the body that is to decide the appeal and related matters. 2008, c. 39, s. 188; 2010, c. 64, s. 4; 2018, c. 9, s. 4.

By-law T-1000, *Respecting the Regulation of Taxis, Accessible Taxis and Limousines*:

44.0 General

44.1 The Licensing Authority may suspend or revoke the owner's license or driver's license, or both, of any license holder, or refuse any applicant who

- (a) contravenes this by-law;
- (b) is either charged or convicted pursuant to any municipal by-law, or provincial or federal legislation;
- (c) has committed any act or acts that, in the opinion of the Licensing Authority, it is in the public interest that the person not hold either an owner's license or driver's license;
- (d) refuses to respond or cooperate with an investigation conducted by the Licensing Authority;
- (e) has been convicted within the last ten years of a criminal offence as set out in Schedule A to this By-law;
- (f) has failed to immediately notify the Licensing Authority that they have become the subject to a court order, undertaking, charge or conviction;

(g) has a driving record, criminal or provincial offence record or outstanding criminal charges that in the opinion of the Licensing Authority makes him or her unfit to operate a taxi, accessible taxi, or limousine, as the case may be;

(h) has a criminal record in another country or jurisdiction that is similar in nature to the provisions described in subsection (a); or

(i) is in violation of the Taxicab Passenger/Operator Code of Ethics as set out in Administrative Order 39.

48.0 Appeals

48.1 A person whose application for the issuance or renewal of an owner's license or driver's license is refused by the Licensing Authority, or a person whose owner's license or driver's license is suspended, revoked or cancelled by the Licensing Authority, may appeal the refusal, suspension, revocation or cancellation to the Appeals Committee, within 15 days from the date of the refusal, suspension or cancellation.

48.1A There is no right of appeal of a non-discretionary decision of the Licensing Authority.

48.2 A person whose application is refused or a person whose owner's license or driver's license is suspended, revoked or cancelled by the Licensing Authority may appeal to the Appeals Standing Committee within 15 days after the refusal, suspension or cancellation by submitting their appeal in writing to the Municipal Clerk's Office.

48.3 The Appeals Committee must hear the Appellant and may

(a) confirm or vary the decision of the Licensing Authority;

(b) order that a license be revoked and surrendered; or

(c) order that a license be granted or reinstated, with or without conditions.

48.4 The Appeals Committee may order that a license be granted or reinstated subject to the appellant passing any tests provided for in this by-law, or proving that he or she meets the qualifications and requirements of this by-law, or subject to any conditions that the appeal committee determines appropriate under the circumstances.

48.4A A person whose appeal of an application refusal, renewal refusal or a license revocation is not successful must wait one calendar year from the date of the hearing of the appeal before submitting a new application to the Licensing Authority.

48.5 The Appeals Committee must not make any decision that the Licensing Authority could not have made under this by-law.