



**THE CORPORATION OF THE TOWN OF KINGSVILLE**

**BY-LAW APPEAL COMMITTEE**

**RULES OF PROCEDURE**

**JANUARY 2019**

## TABLE OF CONTENTS

<b>Part 1: Short Title .....</b>	<b>3</b>
<b>Part 2: Definitions. ....</b>	<b>3</b>
<b>Part 3: General Rules .....</b>	<b>3</b>
<b>Part 4: Publication of Rules .....</b>	<b>4</b>
<b>Part 5: Hearings .....</b>	<b>4</b>
<b>Part 6: Notice of Hearings.....</b>	<b>5</b>
<b>Part 7: General Jurisdiction and Powers .....</b>	<b>5</b>
<b>Part 8: Dismissal without Hearing.....</b>	<b>6</b>
<b>Part 9: Procedures and Evidence at Hearing .....</b>	<b>6 ,</b>
<b>7 Part 10: Appeal Committee's Criteria for Making Decisions .....</b>	<b>7</b>
<b>Part 11: Decisions of Appeal Committee to be Final .....</b>	<b>7</b>
<b>Part 12: Costs .....</b>	<b>7</b>

\*Applicants who require accommodations for participation at a hearing are requested to discuss those requests with Municipal staff upon the filing of your appeal. The Town will attempt to make the necessary arrangements.

## **Part 1: Short Title**

This procedural manual shall be known as the "Rules of Procedure" for the Town of Kingsville By-law Appeal Committee.

## **Part 2: Definitions**

"**Appellant**" means any individual, corporation or partnership that has filed an Appeal Request Form, requesting an appeal hearing before the Committee.

"**Appeal**" means a request for reconsideration of a decision of Municipal administration.

"**Appeal Request Form**" means the prescribed form used to initiate a Proceeding under these Rules and the Appeal Committee By-law.

"**Chair**" means the Chair Committee, as appointed by the members.

"**Committee**" means the Town's By-law Appeal Committee.

"**Council**" means the Council of the Town.

"**Hearing**" means a hearing in any Proceeding.

"**Interested Party**" means any person, not a party to the Proceeding, who wishes to make representations to the Committee in relation to an Appeal before the Committee.

"**Member**" means the person(s) appointed by Council to the Committee for a specified term.

"**Proceeding**" means a matter brought before the Committee under the provisions of Committee Appeal By-law.

"**Representative**" refers to a licensee, as defined by the *Law Society Act*, R.S.O. 1990, c. L.8.

"**Rules**" shall mean the Rules of Procedure of the Committee; and "**Rule**" refers to a section of these Rules.

"**Solicitor**" shall mean the Chief Legal Officer for the Corporation of the Town of Kingsville, or that person's designate.

"**Town**" means the Corporation of the Town of Kingsville.

### **Part 3: General Rules**

- 3.1 The Rules apply to all Proceedings.
- 3.2 The Rules apply, subject to the Statutory Powers Procedure Act, and any other legislation which may govern the Committee.
- 3.3 The Committee may, as it deems necessary, dispense with compliance with any Rule, save and except those prescribed as mandatory by the Statutory Powers Procedure Act and prescribed as mandatory by any other legislation governing the Committee.
- 3.4 The Rules shall be liberally construed to secure the just, most expeditious and cost-effective determination of every Proceeding on its merits.
- 3.5 Where a matter is not provided for in the Rules, the practice shall be determined by the Committee as a whole or during the Proceeding, having regard to the principles, policies and procedures established by the Statutory Powers Procedure Act.

### **Part 4: Publication of Rules**

- 4.1 A written copy of the rules shall be made available as reference material for any Appellant or Interested Party at every hearing.

### **Part 5: Hearings**

#### Request for Hearing

- 5.1 Where an Appellant wishes to request a hearing regarding an appealable decision under a By-law, the Appellant shall provide the following to the Municipal Clerk within thirty (30) days of delivery of notice of the decision being appealed:
  - a) Appeal Request Form;
  - b) Identification of the Appellant and any other known interested persons; and
  - c) Any fee established under the Town's User Fees Bylaw;

#### Location of Hearings

- 5.2 Proceedings of the Committee shall be conducted in Council Chambers at the Municipal Office (2021 Division Road North, Kingsville), unless otherwise specified in the Notice of Hearing.

#### Appearance before Appeal Committee

- 5.3 An Appellant or Interested Party may appear and be heard, either orally, or by written brief, in person or by his/her Representative.
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### Disclosures of Pecuniary Interest

- 5.4 The Committee is subject to the Municipal Conflict of Interest Act, as may be amended from time to time. If a Member has a pecuniary interest, in any matter in which the Appeal Committee is engaged and if s/he is present at a hearing, s/he shall disclose the interest and the general nature thereof prior to the Appellant or the Town representatives introducing evidence or making an opening statement as outlined in Rule 9.2 and shall not take part in the consideration or discussion of the matter.

### Open to the Public

- 5.5 Hearings are open to the public.

### Quorum

- 5.6 A minimum of three (3) Members must be present to achieve quorum for a Hearing. If no quorum is present within 30 minutes of the scheduled start time, all Hearings are rescheduled to a new date, and a fresh Notice of Hearing will be sent out as if it were the first Notice of Hearing.

### Quorum and Pecuniary Interest

- 5.7 Notwithstanding Rule 5.7, if Members recuse themselves by reason of having declared an interest in accordance with Rule 5.4, leaves a remaining number of Members that does not make quorum, the remaining Members will be deemed to constitute quorum, provided that there is not less than two (2) Members present to continue the Hearing. In such cases, a unanimous decision of the Committee is required.

## **Part 6: Notice of Hearings**

### Notice of Hearing

- 6.1 The Notice of Hearing shall be delivered, at least fifteen (15) days prior to the Hearing and shall be furnished to the contact particulars provided by the Appellant, and if furnished to said contact particulars by regular mail, by email, by personal service or by courier shall be deemed adequate, if mailed, emailed or personally served at least 15 calendar days prior to the scheduled hearing.

### Contents of the Notice of Hearing

- 6.2 The Notice of Hearing shall contain a statement of the statutory authority to hold the Hearing and the time, place and purpose of the Hearing, and a statement that if the Appellant, or his/her representative, does not attend the Hearing, the Committee may proceed in Appellant's absence and the Appellant will not be entitled to any further notice in the Proceeding.

## Service by Publication

- 6.3 If, in any case within the jurisdiction of the Committee, it is made to appear to the satisfaction of the Appeal Committee that service of any such notice cannot conveniently be made or effected, the Appeal Committee may order and allow such service to be made by publication in at least one newspaper and on the Municipal Website.

## Service of other Documents

- 6.4 Any regulation, order, direction, decision, report or other document may, unless in any case otherwise provided, be served in like manner as notice may be given under this section.

## Part 7: Committee Jurisdiction and Powers

- 7.1 To hear and determine all applications made, proceedings instituted and matters brought before it and for such purpose to make such orders, give such directions, issue such approvals, deny or vary applications and otherwise do and perform all such acts, matters, deeds and things, as may be necessary or incidental to the exercise of the powers conferred upon the Committee;
- 7.2 To perform such other functions and duties as are now or hereafter conferred upon or assigned to the Appeal Committee by Municipal By-Law or under statutory authority;
- 7.3 To make, give or issue or refuse to make, give or issue any order, directions, regulation, rule, permission, approval, certificate or direction, which it has power to make, give or issue;
- 7.4 To hold hearings or other proceedings by a conference telephone call, by videoconference or any other electronic or automated means, subject to any rules made by the Appeal Committee regulating their use.
- 7.5 The Committee, as to all matters within its jurisdiction, has authority to hear and determine all questions of law or of fact.

## Part 8: Dismissal without Hearing

- 8.1 Despite the Statutory Powers Procedure Act or any other Act, the Committee may dismiss any matter brought before it without holding a hearing on its own motion if:
- a) the fee(s) prescribed under a valid Town fees and charges bylaw, have not been paid;
  - b) the Appellant fails to attend the hearing and the matter has been adjourned at least one time previously. Alternatively, the Appeal Committee may proceed in the absence of the Appellant if the Appellant fails to attend the hearing;
  - c) the Appellant fails to follow timelines for filing an appeal established under these Rules; or
  - d) the Appellant does not comply with any other Rule under these Rules.

## **Part 9: Procedures and Evidence at Hearing**

- 9.1 The rules of evidence hereinafter established will be substantially followed by the Committee. If appropriate, and upon consultation, the Chair may relax such rules when in his/her judgment such relaxation would not impair the rights of any party and would more speedily conclude the presentation of the claim.
- 9.2 The general order of the presentation of evidence at a hearing shall be as follows:
- a) the Appellant shall introduce evidence (including witnesses) and/or make submissions;
  - b) the Town's representative shall introduce evidence (including witnesses) and/or make submissions;
  - c) any Interested Party may introduce evidence (including witnesses) and/or make submissions;
  - d) Members may ask questions of the parties at any point in time during the proceedings. In the event that the Appeal Committee poses a question, each party to the proceeding shall be given an opportunity to answer the question;
  - e) Rebuttal evidence shall only be permitted where necessary in the opinion of the Appeal Committee.
  - f) Closing statements from all parties.
- 9.3 Neither the Appellant, an Interested Party nor the Town's representative may introduce testimony of more than two witnesses at a hearing, except with leave of the Chair.
- 9.4 The presentation of evidence by the Appellant is limited to 30 minutes in total duration.
- 9.5 The presentation of evidence by the Municipality is limited to 30 minutes in total duration.
- 9.6 The presentation of evidence by an Interested Party is limited to 15 minutes in total duration.
- 9.7 Closing submissions by any party are limited to 5 minutes in duration.
- 9.8 Time extensions to any of the foregoing are at the sole discretion of the Chair.
- 9.9 No party has any right to a deposition, affidavit of documents, examination for discovery or similar mechanism to question or obtain documents from the opposing party under oath prior to a hearing.
- 9.10 The parties may file an agreed statement of facts in writing or by stipulation in the record, which will be treated in all respects as evidence.
- 9.11 Affidavit evidence is not permissible unless specifically permitted by the Chair.
- 9.12 The Chair shall rule upon all questions of procedure and in the event that evidence is taken, on the admissibility of the evidence where so challenged. The Chair and the Committee may consult with the Municipal Solicitor on such matters. The decision of the Chair shall be final.

- 9.13 The Chair may allow oral hearsay evidence to be admitted and shall assess the weight of the said evidence accordingly. Oral references to Municipal policies or administrative practices may be considered without a copy of the applicable document.

#### **Part 10: Committee's Criteria for Making Decisions**

- 10.1 The Appeal Committee shall apply the criteria established under each by-law applicable to the particular hearing in making its decision.

#### **Part 11: Decisions of the Committee**

- 11.1 Every decision or order of the Appeal Committee is final, without right of appeal to any Court or to Council.
- 11.2 The Committee may give an oral decision or may reserve its decision. In the event that the decision is reserved, the Committee will attempt to issue its decision within fifteen (15) days after the Hearing is completed.
- 11.3 The Committee may recess at any time to consider its final decision or any interim decision during the Hearing.
- 11.4 If the decision is reserved, the Chair will advise the Appellant that the Appellant will be notified of the decision by registered mail.
- 11.5 The Committee shall attempt to provide a written.

#### **Part 12: Costs**

- 12.1 The Committee does not have the power or authority to order costs to any party with respect to a hearing or application for a hearing.