

RULES OF PROCEDURE

APPEALS under CITY OF HAMILTON BY-LAW NO. 19-259, being a By-law To Administer Notices and Other Matters under the *Trespass to Property Act*

DEFINITIONS

1. In these Rules of Procedure:
 - a. **Appeal Officer** shall mean any one of the following persons:
 - I. City Solicitor;
 - II. Deputy City Solicitor;
 - III. City Manager.
 - b. **Appellant** shall mean any person who appeals a Trespass Notice pursuant to the provisions of the By-law.
 - c. **By-law** shall mean City of Hamilton By-law 19-259, being a By-law To Administer Notices and Other Matters under the *Trespass to Property Act*.
 - d. **Issuer** shall mean the senior staff person who gave the Trespass Notice.
 - e. **Rules** shall mean these Rules of Procedure, made pursuant to Section 25.1 of the *Statutory Powers and Procedures Act*.

GENERAL

2. All hearings conducted by the Appeal Officer shall be in accordance with the *Statutory Powers Procedure Act* and these Rules of Procedure.
3. No person who was involved in the determination of the terms of the Trespass Notice under appeal shall be the Appeal Officer who hears the appeal.

COMPUTATION OF TIME

4. When calculating timelines pursuant to these Rules:
 - a. count the days by excluding the first day and including the last day of the period;
 - b. where a period of five days or less is prescribed, holidays (including Saturdays and Sundays) shall not be counted;
 - c. if the last day of the period of time falls on a holiday, the act may be done on the next day;
 - d. in all cases, a requirement to complete an act shall include a requirement to complete the act by 4:30 p.m. on the day the act shall be completed.

DOCUMENTS TO BE PROVIDED TO CITY CLERK

5. Every submission or document required by these Rules, and every decision of the Appeal Officer shall be provided directly to the City Clerk.

METHODS OF SERVICE

6. Any submission, document, notice or decision to be given to or by the City Clerk pursuant to these Rules must be in writing, given in any of the methods described in Column 1 with an effective date as described in Column 2:

Column 1	Column 2
Method	Deemed Effective
Personally	On the date it is personally given or delivered by courier or hand delivered;
By fax to the recipient’s last known fax number;	On the date on which the fax is sent
By e-mail to the recipient’s last known e-mail address;	On the date the e-mail is sent;
By registered or regular mail or courier or hand delivery addressed to the recipient’s last known address.	On the fifth day after the date of mailing by registered or regular mail.

CONTENT OF WRITTEN SUBMISSIONS

- 7. Written submissions required by these Rules shall:
 - a. Be not more than five (5) pages in length for:
 - 1. Submissions made pursuant to Sections 34 and 35 of these Rules;
 - b. Be not more than two (2) pages in length for a further response by the Appellant under Section 36 of these Rules;
 - c. Be typewritten where possible;
 - d. Be written using plain language;
 - e. Outline the relevant facts in chronological order;
 - f. Explain the outcome that is requested from the Appeal Officer and arguments supporting that outcome;
 - g. Where applicable, state an objection to a written hearing by setting out details of the claim that there is a good reason for not holding a written hearing.

CITY CLERK TO CIRCULATE DOCUMENTS

- 8. Upon receipt of any submission or document required by these Rules, the City Clerk shall provide a copy to every other party in the proceeding and to the Appeal Officer forthwith.
- 9. Upon receipt of any decision made by an Appeal Officer, the City Clerk shall provide a copy to the Appellant and the Issuer.
- 10. Upon issuance of the Notice of Hearing pursuant to Section 23 of these Rules the City Clerk shall provide to the Appeal Officer:
 - a. A copy of the Trespass Notice;

- b. A copy of the Notice of Appeal;
- c. A copy of the Notice of Hearing;
- d. Any supplementary or additional correspondence relating to (a)-(c) above.

PUBLIC ACCESS TO DOCUMENTS

- 11. Members of the public will be entitled to reasonable access to the submissions and documents provided pursuant to these Rules, unless the Appeal Officer is of the opinion that the documents include:
 - a. matters involving public security;
 - b. intimate financial or personal matters or other matters of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure thereof in the interests of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public.

DECISION

- 12. In their decision regarding any Objection to a written hearing, the Appeal Officer shall either:
 - a. Affirm the written hearing; or
 - b. Convert the hearing to an oral hearing and give notice of the date, time and place for the oral hearing.
- 13. In their decision of the appeal, the Appeal Officer shall either:
 - a. revoke the Trespass Notice;
 - b. shorten the term of the Trespass Notice;
 - c. remove prohibited locations from the Trespass Notice; or
 - d. affirm the Trespass Notice.
- 14. In the case of a written hearing, the Appeal Officer shall provide their written decision on the appeal within 5 days of the expiry of the period granted to the Appellant for reply submissions pursuant to Section 36 of these Rules.
- 15. In the case of an oral hearing, the Appeal Officer shall provide their written decision within 30 days of the date of an Oral Hearing.
- 16. A decision of an Appeal Officer is final and not subject to review by Council.
- 17. All decisions of an Appeal Officer shall contain written reasons for the decision made.

TRESPASS NOTICE- NOTICE OF APPEAL

- 18. Any person who has received a Trespass Notice with a term of 1 month or more may appeal the Trespass Notice to an Appeal Officer.
- 19. A Notice of Appeal must be made in writing to the City Clerk within three (3) weeks of the date of the Trespass Notice.

20. The request for Appeal must be accompanied by a fee, where specified in the City's Fees and Charges By-law, and all fees shall be submitted by cheque or money order payable to the City of Hamilton. Cash should not be sent in the mail.
21. The Appeal must be submitted by one of the methods prescribed in Section 6 of these Rules.

LATE APPEAL REQUEST

22. Where the City Clerk determines that the Appeal is late (i.e. not delivered to the City Clerk within three (3) weeks of the date of the Trespass Notice), the City Clerk will not accept the Notice of Appeal without the permission of the Appeal Officer.

NOTICE OF HEARING

23. A Notice of Hearing shall be given by the City Clerk to the Appellant and the Issuer as soon as practicable but not more than 60 days following receipt of the Notice of Appeal.
24. The Notice of Hearing shall include a copy of the By-law and a copy of these Rules.
25. The Notice of Hearing shall include:
 - a. a statement of date and purpose of the hearing and details about the manner in which the hearing will be held;
 - b. where a written hearing is proposed, a statement that the hearing will not be held as a written hearing if the Appellant satisfies the Appeal Officer that there is good reason for not holding a written hearing and an indication of the procedure to be followed for that purpose;
 - c. a statement that if the Appellant fails to provide written submissions as required, the Trespass Notice will be affirmed.

MANNER OF APPEAL

26. All appeals will be heard in a manner appropriate to the circumstances of the Appellant and the prohibited conduct underlying the Trespass Notice. The manner of hearing shall be determined by the Appeal Officer.
27. The Appeal Officer may conduct a hearing in writing unless the Appellant satisfies the Appeal Officer that there is good reason for not holding a written hearing.
28. In deciding whether to hold a hearing in writing, the Appeal Officer may consider any relevant factors, including but not limited to:
 - a. the fairness and convenience to the parties;
 - b. the prohibited conduct underlying the Trespass Notice;
 - c. the likelihood of the process being less costly, faster, and more efficient;
 - d. the effect on public access to the Appeal Officer's process;
 - e. whether facts and evidence may be agreed upon;
 - f. whether most of the issues are legal issues;
 - g. whether oral testimony is likely to be necessary.

OBJECTIONS TO A HEARING IN WRITING

29. Where the Appellant receives a Notice of Hearing that indicates the hearing will proceed as a written hearing and the Appellant Objects to a written hearing, the Appellant shall include their Objection, setting out details of the claim that there is a good reason for not holding a written hearing, within their written submissions as required pursuant to Section 34 of these Rules.
30. Where the Appellant includes an Objection to a written hearing within their submissions pursuant to Section 34 of these Rules, the Issuer may include a response to the Objection within their written response as permitted pursuant to Section 35 of these Rules.
31. When the appeal comes before the Appeal Officer to be considered, the Appeal Officer shall consider the Objection to a hearing in writing before considering the merits of the appeal.
32. Where the Appeal Officer converts the hearing to an oral hearing, the written decision shall provide notice of the date, time and place of the oral hearing.
33. Where the Appeal Officer does not agree that an oral hearing is required, the appeal shall be decided based on the written submissions of the parties provided pursuant to Sections 34, 35 and 36 of these Procedures. **For this reason, the arguments submitted by each party should be complete.**

WRITTEN SUBMISSIONS

34. Within 7 days following the date of the Notice of Hearing, the Appellant shall submit their written submissions to the City Clerk. Where an Objection to a hearing in writing is made pursuant to Section 29, that Objection shall be included in the written submissions. **Failure to provide submissions will result in the Trespass Notice being affirmed.**
35. Within 5 days of the expiry of the period granted to the Appellant under Section 34 of these Rules, the Issuer may submit any reply to the written submissions of the Appellant, including where applicable, a reply to the Objection to a hearing in writing, to the City Clerk.
36. Within 3 days of the expiry of the period granted to the Issuer under Section 35 of these Rules, the Appellant shall be entitled to submit a written response to any submissions provided by the Issuer pursuant to Section 35 of these Rules (if necessary).

ORAL HEARINGS

37. Where the Appellant has satisfied the Appeal Officer that a written hearing should not be held, the hearing shall proceed by way of an oral hearing.

38. The Appellant and the Issuer may choose to be represented by legal counsel or a representative at an oral hearing provided that the representative is a person authorized under the *Law Society Act* to represent a person in the proceeding.
39. The Appellant and/or their representatives must sign in.
40. The Appeal Officer will call the hearing to order and will declare any conflicts of interest.
41. The Appeal Officer will address any requests for adjournment or other preliminary matters.
42. Oral hearings are open to the public and documents and submissions provided will form part of the public record unless the Appeal Officer is of the opinion that any of the submissions and/or documents include:
 - a. matters involving public security;
 - b. intimate financial or personal matters or other matters of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure thereof in the interests of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public.
43. Each party may provide an opening submission.
44. The Appellant will call their witnesses who may be the Appellant themselves and/or other witnesses. Once called, a witness is seated at the witness table and is sworn or affirmed if required by the Appeal Officer.
45. At the conclusion of the testimony of each of the Appellants witnesses, the Issuer or their representative and then the Appeal Officer may ask their own questions of the witness(es).
46. After the Appellant has called all of their witnesses, the Issuer or their representative will call their witnesses who may be the Issuer themselves and/or other witnesses. Again, once called, a witness is seated at the witness table and sworn or affirmed if required by the Appeal Officer.
47. At the conclusion of the testimony of each of the witnesses of the Issuer or their representative, the Appellant and then the Appeal Officer may ask their own questions of the witnesses.
48. The Issuer or their representative and then the Appellant or their representative will make final submissions. The final submissions should include what each party is requesting of the Appeal Officer with respect to the Trespass Notice.
49. The Appeal Officer may retire to deliberate in the absence of the parties and the public, and may reserve their decision, which decision shall be provided in writing to the parties.