

SCHEDULE 1

RULES OF PRACTICE AND PROCEDURE FOR HEARINGS BEFORE A HEARINGS OFFICER

1. DEFINITIONS

1.1 In these Rules, unless the context otherwise requires, the following terms have the following meanings:

"appellant" means a person making an appeal under any by-law of the City which permits an appeal to a Hearings Officer;

"City" means The Corporation of the City of London;

"Clerk" means the City Clerk of The Corporation of the City of London or her or his designate;

"document" includes a written document, sound recording, videotape, file, photograph, chart, graph, map, plan, survey, book of account and information recorded or stored by means of any device;

"electronic hearing" means a hearing held by conference telephone call or some other form of electronic technology allowing persons to hear one another;

"hearing" means any hearing in a proceeding;

"Hearings Officer" means a Hearings Officer appointed under the City's Hearings Officer By-law;

"holiday" means:

- (i) any Saturday or Sunday;
- (ii) New Year's Day;
- (iii) Family Day;
- (iv) Good Friday;
- (v) Easter Monday;
- (vi) Victoria Day;
- (vii) Canada Day;
- (viii) Civic Holiday;
- (ix) Labour Day;
- (x) Thanksgiving Day;
- (xi) Christmas Day;
- (xii) Boxing Day; and extended holiday closure, and
- (xiii) Any special holiday proclaimed by the Governor General of Canada or the Lieutenant Governor of Ontario, and where New Year's Day or Canada Day falls on a Saturday or Sunday, the following Monday is a holiday, and where Christmas Day falls on a Saturday or Sunday, the following Monday and Tuesday are holidays, and where Christmas Day falls on a Friday, the following Monday is a holiday;

"motion" means a request for a decision, order or direction of the Hearings Officer made during a proceeding;

"oral hearing" means a hearing at which the parties or their counsel, agents or other representatives attend in person;

"party" means a party specified as a party by law, the person who is the subject of a hearing, a person who has requested a hearing pursuant to law and any person who has been given party status by a Hearings Officer, and shall where applicable, include the City;

"proceeding" means a matter brought before a Hearings Officer for a hearing;

"Rules" means these rules; and

"written hearing" means a hearing held by means of the exchange of documents whether in written form or by electronic means.

2. APPLICATION

- 2.1 These Rules apply to all proceedings before a Hearings Officer exercising a delegated power of decision under the City's Hearings Officer By-law.
- 2.2 These Rules do not apply if a statute or by-law provides for a different procedure to govern proceedings of a Hearings Officer in the exercise of his or her duties.

3. INTERPRETATION

- 3.1 These Rules shall be broadly interpreted so as to ensure the most just and expeditious determination of a hearing on its merits.
- 3.2 Where procedures are not provided for in these Rules, a Hearings Officer may do whatever is necessary and permitted by law to effectively determine the matter before him or her.
- 3.3 A Hearings Officer may exercise any of his or her powers under these Rules on his or her own initiative or at the request of a party.
- 3.4 A defect in form or other technical breach will not make a proceeding invalid.
- 3.5 Where a party to a proceeding has not complied in full with any Rule or procedural order, the Hearings Officer may:
 - (a) grant all necessary amendments or other relief, subject to such conditions as the Hearings Officer considers just;
 - (b) adjourn the proceeding until it is satisfied that such Rule or procedural order has been complied with; or
 - (c) take such other steps as the Hearings Officer considers just and reasonable.

4. CALCULATION OF TIME

- 4.1 To calculate time under these Rules or a procedural order:
 - (a) where there is a reference to a number of days between two events, they shall be counted by excluding the day on which the first event happens and including the day on which the second event happens;
 - (b) where the time for doing an act under these Rules expires on a holiday, the act may be done on the next day that is not a holiday;
 - (c) where a time of day is mentioned in these Rules or in any order in a proceeding, the time referred to shall be the time observed locally in the City of London; and
 - (d) Where a document is filed or served after 4:00 p.m. on any day or at any time on a holiday, the document shall be deemed to have been filed or served on the next day that is not a holiday.

5. EXTENDING OR ABRIDGING TIME

- 5.1 A Hearings Officer may extend or abridge any time prescribed in these Rules or established by a procedural order during a proceeding, on such terms as are just. Where a party cannot meet a time limit prescribed by the Rules, the party shall promptly notify the Clerk and apply for an extension of time by motion.

6. FILING

- 6.1 Filing of any document by any part to a hearing with the Clerk may be effected by personal delivery, by ordinary or registered mail, by fax transmission, by courier, by email or otherwise as the Hearings Officer may order.

- 6.2 All written documents filed shall be legible.
- 6.3 All documents filed with the Clerk by a party shall be served on all other parties by the party forthwith after filing.
- 6.4 Where a document is filed, the Clerk shall date stamp the document. Subject to Rule 4.1, the date of the receipt stamp on the document shall be deemed to be the date of filing, unless the Hearings Officer orders otherwise. A party may request confirmation from the Clerk that a document filed was properly received.
- 6.5 Where the Hearings Officer and the Clerk have no record of the receipt of a document alleged to have been filed, the documents shall be deemed not to have been filed, unless the Hearings Officer orders otherwise.
- 6.6 Where a filing is made by fax, the document shall include a cover page containing the following items:
- (a) the name, address and telecommunication numbers of the sender;
 - (b) the date and time the document is transmitted;
 - (c) the telephone number from which the document is transmitted;
 - (d) the total number of pages transmitted including the cover page; and
 - (e) the name and telecommunication numbers of a person to contact if a problem arises with the transmission of the fax.
- 6.7 The Hearings Officer may direct that where a document is filed by electronic transmission, by email, or by fax, the original and all copies required shall be delivered by a specified time.

7. SERVICE OF DOCUMENTS

- 7.1 Service means the effective delivery of a document to a person or to the representative of that person. Service may be made by:
- (a) personal delivery by delivering the document to the person;
 - (b) courier service to the person's last known address;
 - (c) ordinary or registered mail to the person's last known address;
 - (d) email to the person's last known email address;
 - (e) fax to the person's last known fax transmission number; or
 - (f) otherwise as the Hearings Officer may order.
- 7.2 Without limiting the ability of the Hearings Officer to order service in some other manner, the Hearings Officer may direct service be made by public advertisement.
- 7.3 Where an oral or electronic hearing is in progress, service may also be made by:
- (a) providing the document to the parties present at the hearing;
 - (b) serving the document on any other party who is not present and requests a copy of the document; or
 - (c) any other means directed by the Hearings Officer.
- 7.4 Where a service is made by fax, the document shall include a cover page containing the following items:
- (a) the name, address and telecommunication numbers of the sender;
 - (b) the name of the person to be served;
 - (c) the date and time the document is transmitted;
 - (d) the telephone number from which the document is transmitted;
 - (e) the total number of pages transmitted including the cover page; and
 - (f) the name and telecommunication numbers of a person to contact if a problem arises with the transmission of the fax.
- 7.5 A document that is more than 20 pages may not be served by fax on other parties unless prior consent from the intended recipient is obtained.

- 7.6 Subject to Rule 4.1, service will be effective:
- (a) if the document is delivered by personal delivery, courier, email or fax, on the same day that delivery is made;
 - (b) if the document is delivered by regular or registered mail, on the 5th day after the date of mailing;
 - (c) if service is made by public advertisement, on the last day of publication where there is more than one day of publication or the day of publication where there is only one day of publication; or
 - (d) if service is made by any other means, within the time frames directed by the Hearings Officer.
- 7.7 The Hearings Officer may direct a party who has served a document to file an affidavit of service that indicates how, when and to whom service was made.

8. NOTICE OF APPEAL / REQUEST FOR HEARING

- 8.1 Where an appellant requests a hearing before a Hearings Officer, the notice of appeal shall be in writing, shall be filed with the Clerk and shall include:
- (a) an identification of the appellant and any other party;
 - (b) the addresses, telephone numbers, email address and, where available, fax number for each person identified in clause (a);
 - (c) the name, address telephone number and email address of any agent, representative or lawyer representing the appellant or any other party identified in clause (a);
 - (d) whether special services or accommodation are required, including translation services or services for the visually or hearing impaired;
 - (e) the reasons in support of the appeal; and
 - (f) the signature of the appellant or representative.
- 8.2 Within 5 days after receiving a notice of appeal, the Clerk shall notify the appellant or the appellant's representative, if:
- (a) the documents are incomplete;
 - (b) the documents are received after the time required for filing a notice of appeal has elapsed; or
 - (c) there is some other technical defect in the notice of appeal.
- 8.3 Where the Clerk decides not to process the notice of appeal due to a deficiency listed in Rule 8.2, the Clerk shall provide the party filing the request for hearing notice of such decision, specifying the deficiencies which need to be corrected. Such notice shall advise that the notice of appeal may be commenced upon the party correcting the deficiencies listed in the notice except if the notice has been received after the time required for commencing the proceeding has elapsed.
- 8.4 Subject to Rules 8.2 and 8.3, upon receipt of a request for hearing pursuant to Rule 8.1, the Clerk shall set the hearing date and determine the location and format of the hearing. Upon setting the hearing date and determining the location and format of the hearing, the Clerk shall, provide a written notice of hearing to the parties and others as required by law and as the Clerk considers necessary.
- 8.5 A Notice of Hearing shall contain:
- (a) a reference to the statutory authority or by-law authority under which the hearing is being held;
 - (b) a statement of the time and the purpose of the hearing;
 - (c) a statement that if the party does not participate in the hearing in accordance with the notice, the Hearings Officer may proceed without the party's participation and the party will not be entitled to any further notice in the proceeding;

- (d) any other information the Clerk considers necessary for the proper conduct of the hearing.
- 8.6 In addition to the requirements for a notice of hearing set out in Rule 8.5, a notice of hearing for an oral hearing shall contain:
- (a) the location of the hearing; and
 - (b) a statement that the hearing will be open to the public unless the Hearings Officer directs otherwise.
- 8.7 In addition to the requirements for a notice of hearing set out in Rule 8.5, a notice of hearing for an electronic hearing shall contain:
- (a) details about the manner in which the hearing will be held; and
 - (b) a statement that a Hearings Officer shall not hold an electronic hearing if a party satisfies the Hearings Officer that holding an electronic rather than an oral hearing is likely to cause the party significant prejudice.
- 8.8 In addition to the requirements for a notice of hearing set out in Rule 8.5, a notice of hearing for a written hearing shall contain:
- (a) a statement that the parties will be required to exchange documents with other parties;
 - (b) a statement that the parties will have an opportunity to ask questions in writing on the documents, which the other parties will be required to answer, and will have an opportunity to make submissions; and
 - (c) a statement that the Hearings Officer shall not hold a written hearing if a party satisfies the Hearings Officer that there is good reason for not doing so.

9. DISMISSING PROCEEDINGS WITHOUT A HEARING

- 9.1 The Hearings Officer may dismiss a proceeding without a hearing if:
- (a) the proceeding is frivolous, vexatious or is commenced in bad faith;
 - (b) the proceeding relates to matters that are outside the jurisdiction of the Hearings Officer; or
 - (c) some aspect of the statutory requirements for bringing the proceeding has not been met.
- 9.2 Before dismissing a proceeding under this Rule, the Hearings Officer shall give notice of his or her intention to dismiss the proceeding to all parties setting out the reasons for the dismissal and informing the parties of their right to make written submissions to the Hearings Officer within 10 days of notice being given.

10. PROCEDURAL ORDERS

- 10.1 In any proceeding, the Hearings Officer may issue procedural orders which shall govern the conduct of the proceeding.
- 10.2 The Hearings Officer may, at any time during a proceeding, amend any procedural order which he or she has issued.
- 10.3 The Hearings Officer may, where satisfied that the special circumstances of the proceeding so require, vary or waive compliance with all or any part of any Rule at any time by making a procedural order.
- 10.4 Where a provision of these Rules is inconsistent with a procedural order, the procedural order shall prevail.
- 10.5 Subject to any procedural order issued by the Hearings Officer, the parties to a proceeding may, on consent, waive any of the provisions of these Rules.
- 10.6 A party seeking a waiver of any of the provisions of these Rules shall do so on a timely basis.

11. MOTIONS

- 11.1 The party bringing the motion shall file with the Clerk a copy of the notice of motion setting out the relief sought, the grounds for the motion, the evidence to be relied upon, and the relief sought and serve a copy of the material filed on the other parties.
- 11.2 The Hearings Officer shall direct the procedure to be followed for hearing the motion and may set applicable time limits.
- 11.3 A motion may be made during a hearing, with or without notice, and shall be disposed of in such manner as the Hearings Officer considers appropriate.

12. DISCLOSURE

- 12.1 The Hearings Officer may, at any stage in a proceeding make orders for:
 - (a) the exchange of documents;
 - (b) the oral or written examination of a party; or
 - (c) any other form of disclosure.
- 12.2 The Hearings Officer's power to make orders for disclosure is subject to any statute or regulation that applies to the proceeding and nothing in this Rule requires the disclosure of any document which is privileged by law.
- 12.3 Where the good character, propriety of conduct or competence of a party is an issue in a proceeding, the party is entitled to be furnished prior to the hearing with reasonable information of any allegations with respect thereto.

13. SUMMONSES

- 13.1 The Hearings Officer may require any person, including a party, to attend at the hearing to give evidence under oath or affirmation and to produce in evidence documents and things as specified by the Hearings Officer relevant to the subject matter of the hearing and admissible at a hearing.
- 13.2 A party may request a summons to witness which may be issued by the Hearings Officer provided that he or she is satisfied by the party requesting the summons that the person to be summoned is able to give material evidence in the proceeding.
- 13.3 A summons issued under Rule 13.1 or 13.2 shall be in the form prescribed by the *Statutory Powers Procedure Act, R.S.O. 1990, c. S.22* and signed by the Hearings Officer and shall be served personally on the person summoned.
- 13.4 A person summoned under Rule 13.1 is entitled to receive from the City and a person summoned under Rule 13.2 is entitled to receive from the party who summoned him/her the fees or allowances for attending at or otherwise participating in the hearing as are paid to a person in accordance with Tariff 'A' of the Rules of Civil Procedure.

14. HEARINGS

- 14.1 The Hearings Officer may hold:
 - (a) an oral hearing;
 - (b) a written hearing;
 - (c) an electronic hearing; or
 - (d) a hearing which combines one or more of the above formats.
- 14.2 A party to a proceeding may be represented by counsel, agent or other representative. A representative may act on behalf of and represent a person in respect of a proceeding or hearing before the Hearings Officer where the Hearings Officer is satisfied that:
 - (a) the person is entitled to be heard by the Hearings Officer;

- (b) the representative is a lawyer, a licensed paralegal or a person who is exempt from the requirement to be licensed by By-law passed pursuant to the *Law Society Act, R.S.O. 1990, c. L.8*;
 - (c) the person has authorized in writing the representative to act on behalf of and to represent the person in the particular proceeding or hearing;
 - (d) the written authorization specifies the representative's qualification for the purpose of paragraph 6.3(b) including, in the case of a representative who claims to be exempt from the requirement to be licensed, the particular ground prescribed by By-law passed pursuant to the *Law Society Act, R.S.O. 1990, c. L.8* upon which the representative purports to be exempt; and
 - (e) the written authorization has been filed in the proceeding or hearing before the Hearings Officer and remains in effect.
- 14.3 If a person requires a translator at any time during a proceeding, the person must provide the translator at the person's own expense.
- 14.4 Hearings shall be open to the public except where the Hearings Officer is of the opinion that,
- (a) matters involving public security may be disclosed; or
 - (b) intimate financial or personal matters or other matters may be disclosed at the hearing 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, in which case the Hearings Officer may hold the hearing in the absence of the public.
- 14.5 No person shall take or attempt to take a photograph, motion picture, video recording, or other recording capable of producing visual or aural representations by electronic means or otherwise, at any hearing otherwise open to the public, except in the following circumstances:
- (a) No fewer than three (3) days prior to the hearing, the person gives written notice to the Clerk of the person's intention to request the Hearings Officer for permission to record the hearing which notice specifies the proposed means of recording;
 - (b) The person bears all costs related to the proposed recording;
 - (c) Where the person proposes verbatim transcription:
 - i) the recording is undertaken by a qualified verbatim reporter;
 - ii) all testimony and submissions respecting the hearing are recorded; and
 - iii) the person delivers to the Clerk no fewer than two (2) certified copies of the transcript prepared by the qualified verbatim reporter within three (3) days of the reporter's completion of the transcript;
 - (d) the Hearings Officer determines that the hearing will not be disrupted or delayed if approval is given;
 - (e) the Hearings Officer determines that the approval will not result in any prejudice to any party to the proceeding;
 - (f) prior to the commencement of the hearing, the Hearings Officer authorizes the recording and has not revoked the authorization; and
 - (g) the recording is undertaken only in accordance with the Hearings Officer's approval including any terms or conditions to such approval.
- 14.6 A party may:
- (a) at any hearing, present evidence and submissions; and
 - (b) at an oral or electronic hearing, call and examine witnesses and conduct cross-examinations of witnesses reasonably required for a full and fair disclosure of all matters relevant to the issues in the proceeding.

- 14.7 Unless the Hearings Officer directs otherwise, the process for all hearings shall be as follows:
- (a) the Hearings Officer will call the hearing to order and may advise the parties of the hearing process;
 - (b) the Hearings Officer may decide which of the parties it wished to hear from first, but it is customary that the City proceed first;
 - (c) a party may make a brief opening statement;
 - (d) the Hearings Officer will swear or affirm the witnesses;
 - (e) each party will present its case by calling witnesses. The process for each witness to give evidence is: direct examination, cross-examination and re-examination, if any;
 - (f) the Hearings Officer may ask questions of the witnesses at any time;
 - (g) a party may make a brief closing statement;
 - (h) this process is subject to change by the Hearings Officer if he or she finds that there is a fairer way of proceeding.
- 14.8 All parties to a hearing shall bring to the hearing legible copies of all documents they intend to rely on during the hearing for the Hearings Officer and the other parties.
- 14.9 The Hearings Officer may adjourn a hearing at any time on such conditions as he or she considers just.
- 14.10 Where a person is properly notified of a hearing and does not attend at the time and place appointed, the Hearings Officer may proceed in that person's absence and without further notice to that person.

15. EVIDENCE AT HEARINGS

- 15.1 The Hearings Officer may admit as evidence at a hearing, whether or not given or proven under oath or affirmation or admissible in a court,
- (a) any oral testimony; and
 - (b) any document or other thing,
- relevant to the subject matter of the proceeding and may act on such evidence, but the Hearings Officer may exclude anything unduly repetitious.
- 15.2 Nothing is admissible in evidence at a hearing, that would be inadmissible in a court by reason of any privilege under the law of evidence or that is inadmissible by the statute or by-law under which the proceeding arises or any other statute.
- 15.3 Nothing in Rule 15.1 overrides the provisions of any act expressly limiting the extent to or purposes for which any oral testimony, documents or things may be admitted or used in evidence in any hearing.
- 15.4 Where the Hearings Officer is satisfied as to its authenticity, a copy of a document or other thing may be admitted as evidence at a hearing.
- 15.5 Where a document has been filed in evidence at a hearing, the Hearings Officer may, or the person producing it or entitled to it may with the leave of the Hearings Officer, cause the document to be photocopied and the Hearings Officer may authorize the photocopy to be filed in evidence in the place of the document filed and release the document filed, or may furnish to the person producing it or the person entitled to it a photocopy of the document filed certified by the Hearings Officer.
- 15.6 In any hearing before the Hearings Officer, a statement respecting a matter related to the hearing purporting to be signed by any of the following individuals in relation to their respective individual areas of responsibility is receivable in evidence as proof, in the absence of evidence to the contrary, of the facts stated in the statement for all purposes in the hearing:
- (a) the City Planner
 - (b) the City's Licence Manager
 - (c) the City's Manager of By-law Enforcement
 - (d) an Animal Control Officer of the City of London

(e) a person authorized by a City by-law to undertake inspections.

15.7 The Hearings Officer may, in making a decision in any hearing,

(a) take notice of facts that may be judicially noticed; and

(b) take notice of any generally recognized scientific or technical facts, information or opinions within his or her scientific or specialized knowledge.

16. WITNESSES

16.1 Unless these Rules provide otherwise, witnesses at a hearing shall be examined orally and the examination may consist of direct examination, cross-examination and re-examination. The Hearings Officer may determine whether or not evidence from a witness needs to be under given under oath or affirmation.

16.2 There shall be no undue harassment or embarrassment of a witness as he or she is giving evidence. The Hearings Officer may disallow a question put to the witness that is vexatious or irrelevant to any matter that may be properly inquired into at the hearing.

16.3 The Hearings Officer may at any time during a hearing direct that a witness be recalled for further examination.

16.4 Where a witness appears unwilling or unable to give answers to the questions being asked, the Hearings Officer may permit the party calling the witness to examine the witness by means of leading questions.

16.5 A witness has the right to be advised by counsel or an agent as to his or her rights. Such counsel shall take no other part in the hearing without the permission of the Hearings Officer.

17. EVIDENCE WRITTEN HEARINGS

17.1 Where a proceeding is conducted in writing, the evidence of a witness shall be given by affidavit or, subject to the approval of the Hearings Officer, as agreed upon by the parties.

17.2 All parties are entitled to receive copies of every document that the Hearings Officer receives in a written hearing.

18. DECISIONS

18.1 The Hearings Officer will determine the issues before him or her as he or she considers just. All decisions of a Hearings Officer shall be in writing.

18.2 The Hearings Officer does not have the power to award costs of the proceedings to a party.

18.3 The Hearings Officer will provide his or her decision with his or her reasons in support of the decision, if any, to the Clerk and the Clerk shall send a copy of the decision to the parties.

18.4 The Hearings Officer may at any time correct a typographical error, error of calculation, misstatement, ambiguity, technical error or other similar error made in his or her decision, direction or order.

19. RECORD OF PROCEEDINGS

19.1 The Clerk shall compile a record of any proceedings before a Hearings Officer which shall include:

(a) the notice of the hearing;

(b) all orders and decisions made by the Hearings Officer;

(c) all documentary evidence filed at the hearing subject to any limitation expressly imposed by any other Act on the extent to or the purposes for which any such documents may be used in evidence in any proceeding;

- (d) any other documents that in the opinion of the Clerk or the Hearings Officer should be included in the record of proceedings.

20. STATUTORY POWERS OF PROCEDURE ACT

- 20.1 These Rules have been approved by the Council of the Corporation of The City of London and are intended to be rules contemplated by section 25.1 of the *Statutory Powers Procedure Act, R.S.O. 1990, c. S.22*.

21. SEVERABILITY

- 21.1 If any provision of these Rules is or becomes illegal, invalid or unenforceable, the illegality, invalidity or enforceability of that provision shall not affect the legality, validity or enforceability of the remaining provisions of these Rules.