

The Corporation of the Town of Essex

By-Law Number 2237

Being a by-law to establish an Appeals
Committee in the Town of Essex

WHEREAS Section 23.1 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended (hereinafter the "Municipal Act") permits a municipality to delegate its powers and duties under the Municipal Act or any other Act to a person or body;

AND WHEREAS Section 23.2(1) of the Municipal Act indicates that a municipality may delegate certain legislative and quasi-judicial powers under the Municipal Act only to:

- a) one or more members of its council or a council committee;
- b) a body having at least two members of whom at least 50 percent are:
 - (i) members of its council,
 - (ii) individuals appointed by its council,
 - (iii) a combination of individuals described in subclauses (i) and (ii);

AND WHEREAS the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended, provides a framework for proceedings of tribunals and quasi-judicial committees;

AND WHEREAS Section 15.6 of the *Building Code Act, 1992*, S.O. 1992, c. 23, as amended (hereinafter the "Building Code Act") requires that a by-law passed under Section 15.1 of the Building Code Act shall provide for the establishment of a Property Standards Committee;

AND WHEREAS Section 278(1) of the Municipal Act defines an "employee" as any salaried officer, or any other person in the employ of the municipality or of a local board and includes persons that provide their services on behalf of the municipality without remuneration, exclusive of reimbursement of expenses or honoraria, if council of the municipality has passed a by-law designating such persons or classes of persons as employees for the purposes of this section;

AND WHEREAS Section 279(1) of the Municipal Act provides that a municipality may provide insurance for the protection of its employees or those of any local board of the municipality against risks that may involve pecuniary loss or liability on the part of those employees;

AND WHEREAS the establishment of an Appeals Committee permits The Corporation of the Town of Essex (hereinafter the "Town of Essex") to separate its quasi-judicial functions from its legislative and executive functions;

AND WHEREAS the Council of the Town of Essex wishes to create an Appeals Committee and delegate to it certain powers under the Municipal Act and various municipal by-laws;

NOW THEREFOERE be it resolved that the Council of The Corporation of the Town of Essex hereby enacts as follows:

1. Interpretation

- 1.1 This By-Law may be cited as the "Appeals Committee By-Law".
- 1.2 References in this By-Law or in any of the schedules attached hereto and forming part of this By-Law to any legislation or municipal by-law means as may be amended or replaced from time to time and include any regulations thereunder.

2. Definitions

- 2.1 **“Chair”** means the person appointed as the Chair of the Committee.
- 2.2 **“Council”** means the Council of the Town of Essex.
- 2.3 **“Member”** means the person(s) appointed by Council to the Committee for a specified term.
- 2.4 **“Members of the Public”** means a person(s) who is not a member of Council or a municipal employee of the Town.
- 2.5 **“Town”** or **“Town of Essex”** means The Corporation of the Town of Essex.

3. Appeals Committee

- 3.1 The Town of Essex Appeals Committee is hereby established and shall be comprised of five (5) Members of the Public, including the Chair, who shall be appointed by and sit at the pleasure of Council during such term of Council.
- 3.2 The Chair of the Appeals Committee shall be directly appointed by Council and the individual appointed must be a current or former member of the legal profession or have extensive knowledge of the rules and significant experience applicable to quasi-judicial bodies.
- 3.3 The Chair shall preside at all meetings of the Appeals Committee. In the case of the absence of the Chair, the Appeals Committee members may appoint another member as the Acting Chair for that particular meeting.
- 3.4 The Appeals Committee shall meet monthly, as necessary, for the expedient resolution of the matters brought before it.

4. Rules of Practice and Procedure

- 4.1 The Rules of Practice and Procedure governing the Appeals Committee shall be as set out in Schedule “B” attached hereto and forming part of this By-Law.

5. Jurisdiction

- 5.1 The Appeals Committee has the authority and power to:
 - a) 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 its powers;
 - b) perform such other functions and duties as are now or hereafter conferred upon or assigned to the Appeals Committee by municipal by-law or under statutory authority;
 - c) make, give, or issue or refuse to make, give, or issue any order, directions, regulations, rule, permission, approval, certificate, or direction, which it has the power to make, give or issue; and

d) hear and determine, with respect to matters within its jurisdiction, all questions of law or of fact.

5.2 The Appeals Committee shall be the Property Standards Committee required under Section 15.6 of the *Building Code Act, 1992*.

6. Delegated Powers and Duties

6.1 The Appeals Committee shall be delegated the powers and duties to hear and determine appeals filed in accordance with the by-laws listed in Schedule "A" attached hereto and forming part of this By-Law, as may be amended from time to time, and any other appeals as are hereafter conferred upon or assigned to the Appeals Committee by municipal by-law or statutory authority.

6.2 The Appeals Committee shall be delegated the authority to hear and grant exemptions from the relevant provisions of the by-laws listed in Schedule "A" attached hereto and forming part of this By-Law, as may be amended from time to time, and any other by-laws as are hereafter conferred upon or assigned to the Appeals Committee by municipal by-law or statutory authority, upon the conclusion of any administrative processes described therein.

6.3 The Appeals Committee shall be delegated the authority to hear and grant exemptions from the reports and studies listed in Schedule "A" attached hereto and forming part of this By-Law, as may be amended from time to time, and any other reports and studies as are hereafter conferred upon or assigned to the Appeals Committee by municipal by-law or statutory authority.

7. By-Law Amendments

7.1 Section 44.6.1 of By-Law Number 936, being a by-law to prescribe standards for the maintenance and occupancy of property within the Town of Essex ("Property Standards By-Law"), is hereby amended to read as follows:

"The Appeals Committee shall be and is hereby appointed as the Property Standards Committee for the purposes of this By-Law."

7.2 Section 44.9.1 of By-Law Number 936, the Property Standards By-Law, is hereby amended to read as follows:

"The Chair of the Appeals Committee shall be directly appointed by Council and the individual appointed must be a current or former member of the legal profession or have extensive knowledge of the rules and significant experience applicable to quasi-judicial bodies. The Chair shall preside at all meetings of the Appeals Committee. In the case of the absence of the Chair, the Appeals Committee members may appoint another member as the Acting Chair for that particular meeting."

7.3 Section 3.01 of By-Law Number 1052, being a by-law to provide for licensing, regulating and governing of taxicabs and taxicab drivers in the Town of Essex ("Taxicab Licensing By-Law"), is hereby amended to delete the definition of "Appeals Tribunal" and to replace them with the following:

"Appeals Committee" means the committee that Council has delegated the authority and responsibility to conduct appeal hearings under this By-Law.

- 7.4 By-Law Number 1052, the Taxicab Licensing By-Law, is hereby amended to delete the words "Appeals Tribunal" wherever they appear and to replace them with the words "Appeals Committee".
- 7.5 Sections 12.02, 12.03, 12.05, 12.06, and 12.07 of By-Law Number 1052, the Taxicab Licensing By-Law, are hereby repealed upon the final passage of this By-Law.
- 7.6 Section 12.08 of By-Law Number 1052, the Taxicab Licensing By-Law, is hereby amended to delete the words "of the decision of Council" and to replace them with the words "of the decision of the Appeals Committee".
- 7.7 Schedule "1" to By-Law Number 1052, the Taxicab Licensing By-Law, is hereby amended to delete the third item "Filing an Appeal to the Appeal Tribunal" in the table therein and the corresponding fee of "\$75.00".
- 7.8 Schedule "D" to By-Law Number 2025, being a by-law to license and regulate Short Term Rental Units in the Town of Essex ("STRU Licensing By-Law"), is hereby amended to delete the second item "Filing an Appeal to the Appeals Committee" and the corresponding fee of "\$100.00".
- 7.9 Section 2.0 of By-Law Number 2167, being a by-law regulating the erection of signs within the geographical boundaries of the Town of Essex ("Sign By-Law"), is hereby amended to insert the following definition of "Appeals Committee":

"Appeals Committee" means the committee that Council has delegated the authority and responsibility to conduct appeal hearings under this By-Law.
- 7.10 Section 18.1 of By-Law Number 2167, the Sign By-Law is hereby amended to delete the word "Council" wherever it appears and replace it with "Appeals Committee".
- 7.11 Section 18.1 of By-Law Number 2167, the Sign By-Law, is hereby amended to delete the words "Council may approve an amendment to this By-Law by means of a site plan control agreement, by resolution or by a supplementary by-law, at its discretion" and to replace them with the following:

"The Appeals Committee may approve an exception to this By-Law by means of a resolution at its discretion."

8. Decisions of the Committee

- 8.1 The Appeals Committee shall make decisions that further the public interest and is consistent with the purpose and intent of the relevant by-law.
- 8.2 Every decision or order of the Appeals Committee is final, without right of appeal to any Court or to Council, except as specifically provided for by municipal by-law or statute.

9. Liability

- 9.1 No member of the Appeals Committee or any municipal employee is personally liable for anything done by it, or him or her, under the authority of this By-Law.
- 9.2 The Town of Essex shall provide insurance for the protection of the members of the Appeals Committee against risks that may involve pecuniary loss or liability.

10. Conflict with Other By-Laws

10.1 If any provision of this By-Law conflicts with any provision of any other by-law of the Town of Essex, the provisions of this By-Law shall take precedence.

11. Severability

11.1 If any section, clause, sentence or provision or any part or parts thereof of this By-Law is declared by any court of competent jurisdiction to be invalid, illegal, or ultra-vires, such section, clause, sentence or provision or part or parts thereof shall be severable and shall not affect the validity of any other section, clause, sentence, provision, or part of this By-Law.

12. Enactment

12.1 This By-Law shall come into full force and effect upon the final passing thereof.

Read a first and a second time and provisionally adopted on December 4, 2023.



Mayor



Clerk

Read a third time and finally passed on December 18, 2023.



Mayor



Clerk

Schedule "A" to By-Law Number 2237

Delegated Powers and Duties

In accordance with Section 6.1 of this By-Law, the Appeals Committee is delegated the powers and duties to hear and determine the following:

- Appeals filed in accordance with Property Standards By-Law No. 936
- Appeals filed in accordance with Animal Care and Control By-Law No. 1996
- Appeals filed in accordance with Taxicab Licensing By-Law No. 1052
- Appeals filed in accordance with Short Term Rental Unit Licensing By-Law No. 2025
- Appeals filed in accordance with Tree Management By-Law No. 2205
- Appeals filed in accordance with Fortification By-Law No. 2210
- Appeals filed in accordance with Kennel Licensing By-Law No. 2221

In accordance with Section 6.2 of this By-Law, the Appeals Committee is delegated the authority to hear and grant exemptions from the relevant provisions of the following by-laws, upon the conclusion of any administrative processes described therein:

- By-Law No. 224 – Parking
- By-Law No. 314 – Pool Fences
- By-Law No. 320 – Collection, Removal & Disposal of Waste
- By-Law No. 384 – Fences
- By-Law No. 485 – Water Conservation
- By-Law No. 1070 – Firearm Discharge
- By-Law No. 1194 – Loitering and Nuisance
- By-Law No. 1538 – Recreational Vehicles
- By-Law No. 2011 – Fireworks
- By-Law No. 2038 – Noise Control
- By-Law No. 2167 – Signs

In accordance with Section 6.3 of this By-Law, the Appeals Committee is delegated the authority to hear and grant exemptions from the following reports and studies:

- Development Standards Manual

NOTE: This Schedule may be amended from time to time.



The Corporation of the Town of Essex

Appeals Committee

Rules of Practice and Procedure

Schedule "B" to By-Law Number 2237

Part 1 – Application and Interpretation

1.1 Application

- 1.1.1 These Rules apply to all hearings before the Appeals Committee of The Corporation of the Town of Essex in the exercise of a statutory power of decision, as defined in the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended.
- 1.1.2 These Rules do not apply if a statute or by-law provides for a different procedure to govern proceedings of the Appeals Committee in the exercise of its duties.

1.2 Definitions

- 1.2.1 In these Rules, unless the context otherwise requires, the following terms have the following meanings:
- a) **“Appeals Committee”** means the Appeals Committee of the Town;
 - b) **“appellant”** means an individual, corporation or partnership that has requested a hearing before the Appeals Committee with respect to matters within its jurisdiction;
 - c) **“Chair”** means the person appointed as the Chair of the Appeals Committee;
 - d) **“Clerk”** means the Clerk appointed by the Town and shall include the Deputy Clerk appointed by the Town and/or his or her designate;
 - e) **“hearing”** means the opportunity to present one’s case before the Appeals Committee with respect to matters within its jurisdiction;
 - f) **“interested party”** means any person, not a party to the proceeding, who wishes to make representations to the Appeals Committee in relation to an hearing before the Appeals Committee;
 - g) **“member”** means the person(s) appointed by Council to the Appeals Committee for a specified term;
 - h) **“proceeding”** means a matter brought before the Appeals Committee;
 - i) **“Rules”** means these Rules of Practice and Procedure; and
 - j) **“Town”** means The Corporation of the Town of Essex.

1.3 Interpretation

- 1.3.1 These Rules shall be broadly interpreted to produce the quickest, most just and least expensive determination of the issues before the Appeals Committee.

- 1.3.2 The Appeals 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 any other legislation governing the Appeals Committee.
- 1.3.3 Where procedures are not provided for in these Rules, the Appeals Committee may do whatever is necessary and permitted by law to effectively determine the matter before it, having regard to the Statutory Powers Procedure Act.
- 1.3.4 The Appeals Committee may exercise any of its powers under these Rules on its own initiative or at the request of a party.
- 1.3.5 A defect in form or other technical breach will not make a proceeding invalid.

1.4 Publication of Rules

- 1.4.1 A written copy of these Rules shall be made available as reference material for any appellant or interested party at every hearing.

Part 2 – Hearings

2.1 Request for Hearings

- 2.1.1 Where an appellant wishes to request a hearing before the Appeals Committee with respect to a matter within its jurisdiction, the appellant shall provide the following to the Clerk within thirty (30) days of delivery of notice of the decision being appealed:
- a) Appeal Request Form (in the form and manner prescribed by the Clerk);
 - b) identification of the appellant and any other known interested persons; and
 - c) any fee established by a municipal by-law or the Fees and Charges By-Law.

2.2 Location of Hearings

- 2.2.1 Proceedings of the Appeals Committee shall be conducted in Council Chambers at the Municipal Building (33 Talbot Street South, Essex), unless otherwise specified in the Notice of Hearing.

2.3 Appearance before Appeal Committee

- 2.3.1 An appellant or interested party may appear and be heard, either orally, or by written brief, in person or be represented by counsel, agent, or another representative.
- 2.3.2 Interested parties must contact the Clerk at least forty-eight (48) hours before the scheduled hearing date in order to register as an interested party and to be heard by the Appeals Committee.

2.4 Public Hearings

2.4.1 Hearings shall be open to the public, except where closed meetings are permitted pursuant to Section 239 of the Municipal Act.

2.5 Legal Advice

2.5.1 The Appeals Committee may seek legal advice with respect to procedural matters through the Legal and Legislative Services Department.

2.6 Disclosures of Pecuniary Interest

2.6.1 The Appeals 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 Appeals Committee is engaged and if he/she is present at a hearing, he/she 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 6.2 and shall not take part in the consideration or discussion of the matter.

2.7 Quorum/Majority Decision

2.7.1 A majority of the members of the Appeals Committee shall constitute a quorum of the Appeals Committee for purposes of conducting a hearing.

2.7.2 If no quorum is present within thirty (30) minutes of the scheduled start time, all hearings are rescheduled to a new date, and a new Notice of Hearing will be sent out as if it were the first Notice of Hearing.

2.7.3 A majority of the members of the Appeals Committee participating in a hearing shall determine any action or decision to be made by the Appeals Committee.

2.7.4 If members recuse themselves by reason of having declared an interest in accordance with Rule 2.6.1 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 Appeals Committee is required.

Part 3 – Notice of Hearings

3.1 Notice of Hearing

3.1.1 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.

3.1.2 If the Notice of Hearing is furnished to said contact particulars by regular mail, email, personal service or courier, it shall be deemed adequate, if mailed, emailed, or personally served at least fifteen (15) calendar days prior to the scheduled hearing.

3.2 Contents of the Notice of Hearing

3.2.1 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 Appeals Committee may proceed in the appellant's absence and the appellant will not be entitled to any further notice in the proceeding.

3.3 Service by Publication

3.3.1 If, in any case within the jurisdiction of the Appeals Committee, it is made to appear to the satisfaction of the Appeals Committee that service of any such notice cannot conveniently be made or effected, the Appeals Committee may order and allow such service to be made by publication on the Town's website and the local newspapers.

3.4 Service of Other Documents

3.4.1 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 4 – Committee Jurisdiction and Powers

4.1 Jurisdiction

4.1.1 The Appeals Committee has the authority 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 it.

4.1.2 The Appeals Committee has the authority to perform such other functions and duties as are now or hereafter conferred upon or assigned to the Appeals Committee by municipal by-law or under statutory authority.

4.2 General Powers

4.2.1 The Appeals Committee has the power 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.

- 4.2.2 The Appeals Committee has the power 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 Appeals Committee regulating their use.
- 4.2.3 The Appeals Committee, as to all matters within its jurisdiction, has the authority to hear and determine all questions of law or of fact.

Part 5 – Dismissing Proceedings

5.1 Dismissal without Hearing

- 5.1.1 Despite the Statutory Powers Procedure Act or any other Act, the Appeals Committee may dismiss any matter brought before it without holding a hearing on its own motion if:
- a) the fee(s) prescribed by a municipal by-law or a valid Fees and Charges By-Law of the Town, 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 Appeals 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 6 – Procedures and Evidence at Hearing

6.1 Hearing Procedures

- 6.1.1 The rules of evidence hereinafter established will be substantially followed by the Appeals Committee. If appropriate, and upon consultation, the Chair may relax such rules when in his/her judgement such relaxation would not impair the rights of any party and would more speedily conclude the presentation of the claim.
- 6.1.2 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) interested parties (as permitted by the registration process prescribed in Rule 2.3.2) may introduce evidence (including witnesses) and/or make submissions

in accordance with the evidence provisions set out in Section 6.2 of these Rules;

- d) members may ask questions of the parties at any point in time during the proceedings. In the event that the Appeals 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 Appeals Committee;
- f) closing statements from all parties.

6.2 Evidence

- 6.2.1 The presentation of evidence and closing statement by the appellant shall not exceed five (5) minutes and the presentation of evidence and closing statements by the appellant and all interested parties shall not exceed ten (10) minutes in total duration.
- 6.2.2 Time extensions of the foregoing are at the sole discretion of the Chair.
- 6.2.3 No party has the 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.
- 6.2.4 The parties may file an agreed statement of facts in writing or by situation in the record, which will be treated in all respects as evidence.
- 6.2.5 Affidavit evidence is not permissible unless specifically permitted by the Chair in advance of the proceeding due to the absence of the appellant or an interested party, as allowed by the Chair considering the circumstances of such absence.
- 6.2.6 The Chair shall rule upon all questions of procedure and in the event that objection is taken on the admissibility of the evidence where so challenged. The Chair and the Appeals Committee may consult with the Legal and Legislative Services Department on such matters. The decision of the Chair shall be final.
- 6.2.7 The Chair may allow oral hearsay evidence to be admitted and the Appeals Committee shall assess the weight of the said evidence accordingly. Oral references to municipal policies or administrative practices or procedures may be considered without a copy of the applicable document.
- 6.2.8 The Chair shall be entitled at any time and at the discretion of the Chair to deny the repeat presentation of evidence.

6.3 Witnesses

- 6.3.1 Neither the appellant, an interested party, nor the Town's representative may introduce testimony of more than two (2) witnesses at a hearing, except with the permission of the Chair.
- 6.3.2 There shall be no undue harassment or embarrassment of a witness as he or she is giving evidence. The Appeals Committee may disallow a question put to the witness that is deemed to be vexatious or irrelevant to any matter that may be properly inquired into at the proceeding.
- 6.3.3 Where a witness appears unwilling or unable to give answers to the questions being asked, the Appeals Committee may permit the party calling the witness to examine the witness by means of leading questions.
- 6.3.4 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 Appeals Committee.

Part 7 – Decisions of the Committee

7.1 Criteria for Making Decisions

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

7.2 Decisions of the Committee

- 7.2.1 Every decision or order of the Appeals Committee is final and binding, without right of appeal to any Court or to Council, except as specifically provided for by municipal by-law.
- 7.2.2 The Appeals Committee will provide its decision by resolution. The Appeals Committee may recess at any time to consider its decision during the hearing.
- 7.2.3 Where a decision is made at the hearing, the Appeals Committee shall provide a written decision as soon as practicable after the conclusion of the hearing, a copy of which will be delivered through the Clerk by hand delivery or registered mail to the appellant at the address provided on their Appeal Request Form. The publishing of the meeting minutes on the Town's website shall be deemed to satisfy this requirement of a written decision.

7.3 Costs

7.3.1 The Appeals Committee does not have the power or authority to order that any party pay the costs of another party with respect to a hearing or application for a hearing.

7.4 Adjournment

7.4.1 The Appeals Committee may adjourn a hearing at any time on such conditions as it considers just.