

# Corporation of the City of Clarence-Rockland

## By-law 2023-38

Being A By-Law to establish the position of Hearings Officer in The City of Clarence-Rockland.

Whereas Council of The Corporation of the City of Clarence-Rockland considers it necessary and desirable to establish the positions of Hearings Officers to whom may be delegated quasi-judicial and legislative authority under various City By-laws

Whereas Section 23.2 of the Municipal Act, 2001 permits a municipal Council to delegate its powers and duties to an individual who is an officer of the municipality; and

Therefore the Council of the City of Clarence-Rockland enacts as follows:

### Part 1 – GENERAL CONDITIONS

#### 1. Definitions

In this by-law,

- 1.1. "Appellant" means a person making an appeal under any by-law of the City which permits an appeal to a Hearings Officer
- 1.2. "Child" means a child born within or outside marriage and includes an adopted child and a person whom a parent has demonstrated a settled intention to treat as a child of her or his family;
- 1.3. "City" means The Corporation of the City of Clarence-Rockland;
- 1.4. "Clerk" means the City Clerk of The Corporation of the City of Clarence-Rockland or her or his designate;
- 1.5. "Council" means the Council of the City;
- 1.6. "Delegated Power of Decision" means a power or right, conferred by or under a City By-law, to make a decision deciding or prescribing,
  - i) the legal rights, powers, privileges, immunities, duties or liabilities of any person or party, or
  - ii) the eligibility of any person or party to receive, or to the continuation of, a benefit or licence, whether the person is legally entitled thereto or not
- 1.7. "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;

- 1.8. "Electronic hearing" means a hearing held by conference telephone call or some other form of electronic technology allowing persons to hear one another;
- 1.9. "Hearing" means any hearing in a proceeding;
- 1.10. "Hearings Officer" means each person from time to time appointed by Council pursuant to section 3 of this By-law;
- 1.11. "Parent" means a person who has demonstrated a settled intention to treat a child as a member of her or his family whether or not that person is the natural parent of the child;
- 1.12. "Proceeding" means any matter brought before a Hearings Officer for a hearing; and
- 1.13. "Representative" means a counsel, agent, 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*
- 1.14. "Spouse" means a person to whom the person is married or with whom the person is living in a conjugal relationship outside marriage.
- 1.15. "holiday" means:
  - a. any Saturday or Sunday;
  - b. New Year's Day;
  - c. Family Day;
  - d. Good Friday;
  - e. Easter Monday;
  - f. Victoria Day;
  - g. Canada Day;
  - h. Civic Holiday;
  - i. Labour Day;
  - j. Thanksgiving Day;
  - k. Christmas Day;
  - l. Boxing Day; and extended holiday closure,
  - m. Any special holiday proclaimed by the Governor General of Canada or the Lieutenant Governor of Ontario, and
  - n. Any holiday that falls on a Saturday or Sunday, the following Monday is a holiday.
- 1.16. "Motion" means a request for a decision, order or direction of the Hearings Officer made during a proceeding;
- 1.17. "In person hearing" means a hearing at which the parties or their counsel, agents or other representatives attend in person;

- 1.18. "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;
- 1.19. "Proceeding" means a matter brought before a Hearings Officer for a hearing;

## 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, unless otherwise specified by law.

## 3. Interpretation

- 3.1. 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.
- 3.2. 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.
- 3.3. A defect in form or other technical breach will not make a proceeding invalid.
- 3.4. 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 Eastern standard time.

- 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.

## Part 2 – APPOINTMENT AND ROLE OF THE HEARINGS OFFICER

6. The positions of Hearings Officers are hereby established for the purpose of exercising Delegated Powers of Decision.
7. Hearings Officers shall be appointed by Council on the recommendation of the City Clerk which recommendation shall give preference to eligible candidates:
  - 7.1. with knowledge and prior experience in administrative law;
  - 7.2. able to carry out a fair and impartial hearing;
  - 7.3. able to write a clear and concise decision;
  - 7.4. with excellent written and oral communication skills;
  - 7.5. with an understanding of the *Statutory Powers Procedure Act, R.S.O. 1990, c. S.22*;
  - 7.6. with an understanding of the *Municipal Act, 2001, S.O. 2001, c. 25*;
  - 7.7. who are Canadian citizens;
  - 7.8. who can provide a satisfactory Police records check.
8. The following are not eligible for appointment as Hearings Officer:
  - 8.1. an employee or member of Council of the City;
  - 8.2. the Parent of a person; or
  - 8.3. a person indebted to the City other than:
    - a. in respect of current real property taxes; or
    - b. pursuant to an agreement with the City the terms with which the person is in compliance.
9. A decision by a Hearings Officer is a statutory power of decision within the meaning of the *Statutory Powers Procedure Act, R.S.O. 1990, c. S.22*, unless otherwise specified by law.

### Part 3 - RULES OF PRACTICE AND PROCEDURE FOR HEARINGS BEFORE A HEARINGS OFFICER

10. The City Clerk or his or her designate, shall determine the scheduling of hearings before any Hearings Officer.
11. No person shall attempt, directly or indirectly, to communicate with or influence a Hearings Officer respecting the determination of an issue respecting a Delegated Power of Decision in a proceeding that is or will be pending before the Hearings Officer except a person who is entitled to be heard in the proceeding or the person's lawyer or licensed paralegal and only by that person or the person's lawyer or licensed paralegal during the hearing in which the issue arises. Failure to comply with this section constitutes an offence.
12. The Hearings Officer may receive legal advice from a lawyer who will be provided by the City.
13. The City Clerk shall provide administrative support related to proceedings before a Hearings Officer, including without limitation, the making and keeping of minutes and records of all requests for hearings and appeals and decisions arising therefrom and of all other official business of Hearings Officers.
14. Filing
  - 14.1. Filing of any document by any party to a hearing with the Clerk may be effected by personal delivery, by ordinary or registered mail, by courier, by email or otherwise as the Hearings Officer may order.
  - 14.2. All written documents filed shall be in a typewritten form.
  - 14.3. All documents filed with the Clerk by a party shall be served on all other parties by the party forthwith after filing.
  - 14.4. Where a document is filed, the Clerk shall date stamp the document. 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.
  - 14.5. 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.
  - 14.6. The Hearings Officer may direct that where a document is filed by electronic transmission, the original and all copies required shall be delivered by a specified time.

14.7. Despite Section 14.6, electronic document that is signed electronically is considered to be an original document.

## 15. Service of documents

15.1. Service of documents means the effective delivery of a document to a person or to the representative of that person. Service of documents 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. otherwise as the Hearings Officer may order.

15.2. A document that is more than 20 pages may not be served on other parties unless prior consent from the intended recipient is obtained.

15.3. Service of documents will be effective:

- a. if the document is delivered by personal delivery, courier, email, 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; or
- c. within the time frames directed by the Hearings Officer.

15.4. 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.

## 16. Notice of appeal / request for hearing

16.1. Where an appellant requests a hearing before a Hearings Officer, the notice of appeal shall be in writing and filed with the Clerk and shall include:

- a. the name, address, telephone number and email address of the appellant;
- b. the name, address, telephone number and email address of any representative of the appellant;
- c. whether accommodation is required;
- d. the reasons in support of the appeal; and
- e. the signature of the appellant or representative.

16.2. 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.
- 16.3. Where the Clerk decides not to process the notice of appeal due to a deficiency listed in Rule 16.2, the Clerk shall provide the party filing the request for hearing notice of such decision, specifying the deficiencies which need to be corrected.
- 16.4. Subject to Rules 16.2 and 16.3, upon receipt of a request for hearing pursuant to Rule 16.1, the Clerk shall set the hearing date and determine 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.
- 16.5. 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. the location of the hearing, if the hearing is in person;
  - d. details about the manner in which the hearing will be held, if it is an electronic hearing
  - e. 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;
  - f. a statement that the hearing will be open to the public unless the Hearings Officer directs otherwise;
  - g. any other information the Clerk considers necessary for the proper conduct of the hearing.

## 17. Dismissing proceedings without a hearing

- 17.1. 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.
- 17.2. 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.

## 18. Procedural orders

- 18.1. In any proceeding, the Hearings Officer may issue procedural orders which shall govern the conduct of the proceeding.
- 18.2. The Hearings Officer may, at any time during a proceeding, amend any procedural order which he or she has issued.
- 18.3. 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.
- 18.4. Where a provision of these Rules is inconsistent with a procedural order, the procedural order shall prevail.

## 19. Motions

- 19.1. 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.
- 19.2. The Hearings Officer shall direct the procedure to be followed for hearing the motion and may set applicable time limits.
- 19.3. 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.

## 20. Disclosure

- 20.1. The Hearings Officer may, at any stage in a proceeding make orders for:
  - a. the exchange of documents;
  - b. the examination of a party; or
  - c. any other form of disclosure.
- 20.2. The Hearings Officer's power to make orders for disclosure is subject to any statute or regulation that applies to the proceeding.

## 21. Summonses

- 21.1. 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.
- 21.2. 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.

- 21.3. 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 to the person summoned.

## 22. Hearings

- 22.1. The Hearings Officer may hold:

- a. an in person hearing; or
- b. an electronic hearing;

- 22.2. 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 22.2 (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.

- 22.3. If a person requires a translator at any time during a proceeding, the person must provide the translator at the person's own expense.

- 22.4. 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.

- 22.5. No person shall take or attempt to take a photograph, motion picture, video recording, or other recording capable of producing visual or oral representations by electronic means or otherwise, at any hearing otherwise open to the public.
- 22.6. A party may:
- a. at any hearing, present evidence and submissions; and
  - b. at an in-person 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.
- 22.7. 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.
- 22.8. 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.
- 22.9. The Hearings Officer may adjourn a hearing at any time on such conditions as he or she considers just.
- 22.10. 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 or may consider the appeal abandoned.

## 23. Evidence at hearings

- 23.1. 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, relevant to the subject matter of the proceeding and may act on such evidence, but the Hearings Officer may exclude anything unduly repetitious.
- 23.2. An evidence that is inadmissible in court will not be admissible in evidence at a hearing.
- 23.3. Where a document has been filed in evidence at a hearing, the Hearings Officer may, cause the document to be photocopied and 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.
- 23.4. 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 City employees is receivable in evidence as proof:
  - a. Manager of By-law Enforcement
  - b. Municipal Law Enforcement Officer or Compliance Officer
  - c. Building Inspector.

## 24. Witnesses

- 24.1. Unless these Rules provide otherwise, witnesses at a hearing shall be examined orally.
- 24.2. 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.
- 24.3. The Hearings Officer may at any time during a hearing direct that a witness be recalled for further examination.
- 24.4. A witness has the right to be advised by a representative as to his or her rights. Such counsel shall take no other part in the hearing without the permission of the Hearings Officer.

## 25. Decisions

- 25.1. 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.

- 25.2. The Hearings Officer does not have the power to award costs of the proceedings to a party.
- 25.3. 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.
- 25.4. The Hearings Officer may at any time correct a typographical error, error of calculation, technical error or other similar error made in his or her decision, direction or order.

## 26. Record of proceedings

- 26.1. 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.

## 27. Statutory powers of procedure act

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

## 28. Severability

- 28.1. 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.

Read, passed and adopted in open council this XX day of XXXX 2023.

Mario Zanth, Mayor

Monique Ouellet, Clerk