

OFFICE CONSOLIDATION

This is a consolidation of the Town's by-law to establish the Appeal Board and its Rules of Procedure being By-law Number 2018-81 as amended by By-law 2020-57 and 2020-81. The following consolidation is an electronic reproduction made available for information purposes only and is not an official version of the by-law. Official versions of all by-laws can be obtained from the Town Clerk by calling (905) 584-2272. If there are any discrepancies between this consolidation and By-laws 2018-81, 2020-57 and 2020-81 the By-laws shall prevail.

THE CORPORATION OF THE TOWN OF CALEDON

BY-LAW NO. 2018-81

A By-law to establish the Appeal Board, its Rules of Procedure and to repeal By-law 2015-021

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

AND WHEREAS the Council for The Corporation of the Town of Caledon deems it necessary to establish the Appeal Board to separate its quasi-judicial functions from its legislative and executive functions;

NOW THEREFORE the Council of The Corporation of the Town of Caledon ENACTS AS FOLLOWS:

Short Title

This By-law shall be known as the "Appeal Board By-law".

Part 1 - Definitions

1.1 In this By-law:

"*Agent*" means, in respect of a *hearing*, counsel or licensed paralegal, or any other individual authorized to represent one or all of the parties to the appeal, including the *Town* and/or the *appellant*;

"*Appeal Board*" means the local board established pursuant to this By-law for the purposes of considering appeals with respect to the *Town's* Animal Care and Control By-law and Licensing By-law;

"*Appellant*" means a person that has filed or is filing a Notice of Appeal requesting a *hearing* before the *Appeal Board* in respect of the Animal Care and Control By-law or Licensing By-law and may include an *agent* on behalf thereof;

"*Chair*" means the Chair of the *Appeal Board*;

"*Coordinator*" means an employee of the *Town* who has been assigned to perform the administrative tasks required by the *Appeal Board*, on behalf of the *Town Clerk*;

"*Council*" means the Council for The Corporation of the Town of Caledon;

"*Document*" means written material, files, photographs, maps, plans, surveys, sound recordings, videotapes, and any information recorded or stored by any means;

"*Electronic hearing*" means a *hearing* called and held in full or in part via electronic means including, but not limited to, video teleconference, audio teleconference or telephone, and with or without in person attendance;

"*Hearing*" means any appeal hearing before the *Appeal Board*, including an *electronic hearing*;

"*Member*" means a person appointed by *Council* to preside over the *Appeal Board*;

"*Notice of Decision*" means a written decision made by the *Appeal Board*;

"*Notice of Hearing*" means the notice issued to the parties of the appeal, setting out the date, time and location of the *hearing*;

"*Quorum*" means a majority of the *members* including the *Chair* for the purposes of transacting the business of the *Appeal Board*;

"*Town*" means The Corporation of the Town of Caledon;

"*Town Clerk*" means the Town Clerk for the *Town* or a designate on behalf thereof.

Part 2 – Establishment and Appointments

- 2.1 The Town of Caledon Appeal Board is hereby established.
- 2.2 The *Appeal Board* shall be composed of five individuals who shall be appointed by *Council* through By-law.
- 2.3 In appointing a *member* to the *Appeal Board*, *Council* shall ensure that such individual is not an employee of the *Town*.

Part 3 – Schedules

- 3.1 The Rules of Procedure for the *Appeal Board* are attached as Schedule A to this By-law and form part thereof.
- 3.2 The per diem for the *members* of the *Appeal Board* shall be set out in Schedule B attached to and forming part of this By-law.

Part 4 – Transition

- 4.1 By-law 2015-021 shall be repealed upon this By-law coming into effect.
- 4.2 This By-law shall come into full force and effect on the date of its enactment.

Enacted by the Town of Caledon Council this 18th day of December, 2018.

"Allan Thompson"
Allan Thompson, Mayor

"Amanda Fusco"
Amanda Fusco, Interim Town Clerk

Schedule A – Rules of Procedure

Part 1 – Application of Rules

General

- 1.1 These Rules of Procedure apply to all *hearings* before the *Appeal Board* subject to the *Town's Licensing By-law*, *Animal Care and Control By-law*, the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22 and any other applicable legislation.
- 1.2 The *Appeal Board* may, at any time, as it deems necessary, dispense with compliance with any rule herein, save and except those prescribed as mandatory by the *Statutory Powers Procedure Act*, R.S.O. 1990, c. s.22 and any other legislation governing the *Appeal Board*.
- 1.3 These Rules of Procedure shall be liberally construed to secure the just, most expeditious and cost-effective determination of every proceeding on its merits.
- 1.4 Where a party to an appeal has not complied in full with any Rule herein, the *Appeal Board* may:
 - (1) adjourn the proceeding until satisfied that such Rule has been complied with; and
 - (2) take any other step as it considers just and reasonable.
- 1.5 A party to a proceeding may be represented by an *agent*.
- 1.6 The *Appeal Board* may meet monthly or as often as is necessary for the expedient resolution of appeals in accordance with these Rules of Procedure.
- 1.7 *Hearings* shall be held at the Town of Caledon Town Hall at 6311 Old Church Road, Caledon, unless otherwise specified in the *Notice of Hearing*.
- 1.8 The *Coordinator* shall administer oaths and affirmations for the purpose of a *hearing*.

Jurisdiction

- 1.9 The *Appeal Board* shall hear appeals pursuant to the following *Town By-laws*:
 - (1) Licensing By-law; and
 - (2) Animal Care and Control By-law.

Part 2 – Tenure of Members

Term

- 2.1 The *member's* term on the *Appeal Board* shall coincide with the term of *Council* that appointed him or her, or until such time as their successor(s) are appointed.
- 2.2 A *member* shall not be appointed for more than 3 consecutive terms of *Council* (for a total of 12 years). Any interim appointments are not to be included in the consideration of the total term of appointment of the *member*.

Vacancies of the Appeal Board Members

- 2.3 Subject to Section 2.4 of these Rules of Procedure, a vacancy on the *Appeal Board* shall occur if a *member* is absent for 3 successive meetings of the *Appeal Board* without confirmation from *Council*.
- 2.4 A *member* who is unable to carry out his/her duties through illness or otherwise shall provide a note to the *Town Clerk* advising of the absence and the anticipated date of return. The *Town Clerk* shall notify *Council* and *Council* shall then confirm the absence or deem the seat vacant. Upon *Council's* confirmation, a *member* may be absent from his/her seat for 3 successive meetings of the *Appeal Board* from the date of his/her notice of illness or otherwise.
- 2.5 In an election year, if a vacancy should occur on the *Appeal Board*, the seat may remain vacant until *Council* is completing its membership appointment for the new term.

- 2.6 *Members* requesting a temporary leave of absence or intending to resign from the *Appeal Board* should provide adequate written notice to the *Coordinator* prior to such action.

Part 3 – Appeal Board Chair

- 3.1 At its first meeting, the *members* shall appoint one *member* as the *Chair*.
- 3.2 When the *Chair* is absent the *Appeal Board* shall appoint another *member* to act as *Chair* for that meeting.
- 3.3 The *Chair* will:
- (1) call the *hearings* to order;
 - (2) preside over the appeals heard by the *Appeal Board*;
 - (3) enforce the observance of order and decorum during all *hearings*;
 - (4) give direction to the *Coordinator* and *Town Staff*; and
 - (5) direct the administrative duties and functions of the *Appeal Board*.
- 3.4 If the *Chair* resigns, either as *Chair* or as *member*, before the end of the term, the remaining *members* of the *Appeal Board* shall appoint another *member* as *Chair* for the balance of the current term, or until a successor is appointed.

Part 4 – Appeal Board Requisites

Quorum

- 4.1 A majority of the *members* must be present to achieve *quorum* for a *hearing*.
- 4.2 If no *quorum* is present 30 minutes after the time appointed for the commencement of the *hearing*, the *Coordinator* shall cancel the *hearing* and shall reschedule the *hearing* in accordance with these Rules.
- 4.3 Notwithstanding Section 4.1, when the number of *members* who refrain from participating in debate of a matter, or voting by reason of having declared an interest according to the provisions of the *Municipal Conflict of Interest Act*, leaves a remaining number of *members* that does not make *quorum*, the remaining *members* will be deemed to constitute *quorum*, provided that not less than two *2 members* remain present to continue the *hearing*.
- 4.4 Where an emergency has been declared in all or part of the Town of Caledon under Section 4 or 7.0.1 of the Emergency Management and Civil Protection Act:
- 4.4.1 any *member* of the *Appeal Board* may participate in an *Electronic Hearing* and be counted for the purposes of establishing *quorum*.

Voting

- 4.5 All actions taken by the *Appeal Board* shall be voted on and the decision made by majority vote.
- 4.6 *Members*, including the *Chair*, may vote on all motions and other questions submitted at a *hearing*.
- 4.7 Call for a vote by the *Appeal Board* on the motion by a show of hands to indicate their position on the motion under consideration and in an *Electronic Hearing* the Council Committee Coordinator shall conduct a recorded vote.
- 4.8 In the case of a tie vote, the motion or question shall be deemed to have been lost.

Part 5 – Record of Hearings

Electronic Record

- 5.1 The *Coordinator* shall record by electronic method the *hearings* of the *Appeal Board*.

[Sections 4.4 and 4.4.1 added, By-law 2020-57 effective August 25/20]

[Section 4.7 added, By-law 2020-57 effective August 25/20]

- 5.2 Other than the *Coordinator*, no person shall take or attempt to take a photograph, motion picture, audio recording or other record capable of producing visual or aural representations by electronic means or otherwise at a *hearing* before the *Appeal Board* that is open to the public, without the *Appeal Board's* consent.

Minutes of Appeal Board Hearings

- 5.3 The *Coordinator* shall prepare minutes of the *hearing* without note or comment.
- 5.4 The minutes of the *hearing* shall include the *Notice of Decision* of the *Appeal Board*.
- 5.5 Where a *hearing* is open to the public, every declaration of a pecuniary interest, and the general nature thereof, made pursuant to Section 12.3 shall be recorded in the minutes of the meeting by the *Coordinator*.
- 5.6 Where a *hearing* is not open to the public, every declaration of a pecuniary interest made pursuant to Section 12.3, but not the general nature of that interest, shall be recorded by the *Coordinator* in the minutes of the next meeting that is open to the public.

Part 6 – Notice Requesting an Appeal

- 6.1 An appeal is commenced by the filing of a Notice of Appeal in the form approved by the *Town Clerk*, in accordance with the provisions of the Licensing By-law or Animal Care and Control By-law as applicable.
- 6.2 A complete Notice of Appeal shall include:
- (1) a copy of the decision or order giving rise to the appeal;
 - (2) a statement setting out the grounds for the appeal;
 - (3) the name, telephone number, email address and address for service of the *appellant* and/or the *agent* on behalf thereof;
 - (4) the original signature of the *appellant* and/or *agent* on behalf thereof;
 - (5) a notice regarding accommodations respecting language, visual or audial impairment or otherwise; and
 - (6) payment of the non-refundable appeal fee as set out in the *Town's Fees By-law*.
- 6.3 A complete Notice of Appeal shall be received by the *Town Clerk* before the close of business, being 4:30 p.m., on the last day the appeal may be filed and such Notice of Appeal shall only be provided by personal delivery, regular or registered mail.
- 6.4 Where a Notice of Appeal is not complete, the *Town Clerk* shall refuse the Notice of Appeal and shall inform the *appellant* of the material required in order to complete the Notice of Appeal.
- 6.5 If a Notice of Appeal is received after the appeal deadline the *Town Clerk* shall refuse the Notice of Appeal and shall advise the *appellant* in writing that:
- (1) the appeal is denied based on the late filing; and
 - (2) the decision or order under appeal is final and binding.

Part 7 – Preparation for a Hearing

Scheduling of Hearing

- 7.1 Within 60 days of receipt of a complete Notice of Appeal by the *Town Clerk*:
- (1) the *Coordinator* shall contact the *members* to advise them of the Appeal and to confirm *quorum* for the next *hearing* date; and
 - (2) the *Coordinator* shall schedule a *hearing*, and shall give reasonable notice to the required parties.
- 7.2 The *Notice of Hearing* shall contain:
- (1) the date, time, location and purpose of the *hearing*;
 - (2) a reference to the statutory authority under which the *hearing* will be held; and

[Subsection
7.2 (4) added,
By-law 2020-
57 effective
August 25/20]

- (3) a statement that if the *appellant* does not attend at the *hearing*, the *Appeal Board* may proceed in the *appellant's* absence and the *appellant* will not be entitled to any further notice in the proceeding.
- (4) a statement that the *hearing* is being held electronically and shall comply with Section 6(5) of the Statutory Powers and Procedure Act, R.S.O. 1990, c. S.22.

Agenda

- 7.3 The *Coordinator* shall compile an agenda for each *hearing* to include all appeals to be dealt with at that *hearing* date.
- 7.4 The *Coordinator* shall provide a copy of the agenda for each *hearing* to the *members* and counsel for the *Appeal Board* at least seven 7 days prior to the *hearing* date with the exception of where a lesser amount of time is deemed sufficient and/or necessary in the discretion of the *Town Clerk*.
- 7.5 A copy of the agenda may be posted to the *Town's* website.

Book of Evidence

- 7.6 The *Coordinator* shall prepare a book of evidence for each appeal to be distributed to the required parties.
- 7.7 A copy of the book of evidence for each *hearing* shall be provided to the *members* and counsel for the *Appeal Board* prior to or on the date of the *hearing*.

Withdrawal of Appeal

- 7.8 An appeal may be withdrawn prior to the *hearing* date by filing a letter of withdrawal with the *Town Clerk* as soon as reasonable.
- 7.9 If the *Town Clerk* receives a withdrawal of appeal prior to the *hearing* date, notice of cancellation of that particular *hearing* shall be sent to all persons who received the *Notice of Hearing*.

Effect of Non-Attendance at a Hearing

- 7.10 Where a *Notice of Hearing* has been given to a party and the party does not attend at the *hearing*, the *Appeal Board* may proceed in the absence of the party and the party is not entitled to any further notice in the proceeding.

Part 8 – Filing Documents

- 8.1 If an *appellant* intends to make use of any *documents* as evidence at the *hearing*, the *appellant* shall provide 10 copies of each item by personal delivery, regular or registered mail and such items shall be required to be received by the *Town Clerk* to allow for three full business days prior to the *hearing* date and, for further clarification, the *hearing* date shall not be included in the three day period.
- 8.2 The *Coordinator* shall distribute copies of the *appellant's documents* to the required parties.
- 8.3 The *appellant* shall include with the *documents* a statement of his or her address, telephone number, email address and the name of the proceeding to which the *documents* relate.

Part 9 – Adjournments

- 9.1 A *hearing* may be adjourned at the discretion of the *Appeal Board* upon its own motion or upon the motion of a party where that party satisfies the *Appeal Board* that the adjournment is required to permit an adequate *hearing* to be held.
- 9.2 In deciding whether to grant an adjournment, the *Appeal Board* may consider one or more of the following factors:
 - (1) the sufficiency of the reasons advanced for the request to adjourn;
 - (2) the timeliness of the request;
 - (3) the resources of the *Appeal Board*;

- (4) the prejudice to the parties;
- (5) whether any adjournments have been granted previously;
- (6) the consent of the parties; and
- (7) any other relevant factor.

9.3 The *Appeal Board* may grant adjournments on such terms and conditions as it considers advisable.

9.4 The *Appeal Board* may, in its discretion, refuse an adjournment even though the parties consent.

Part 10 – Legal Advice to Appeal Board Members

10.1 *Members of the Appeal Board* participating in a *hearing* shall not have taken part, before the *hearing*, in any communication directly or indirectly in relation to the subject-matter of the *hearing*, with any person, or with any party or *agent*, except upon notice to and with opportunity for all parties to participate, but the *Appeal Board* may seek legal advice from counsel to the *Appeal Board* and, in such case, the nature of the advice should be made known to the parties in order that they may make submissions as to the law.

Part 11 – Witnesses

Order for Witness Statements

11.1 The *Appeal Board* may order a party to the *hearing* to provide witness statements or summary of the evidence witnesses will give, including expert witnesses.

Rights of Parties to Examine Witnesses

11.2 A party to a proceeding may, at a *hearing*:

- (1) call and examine witnesses and present evidence and submissions; and
- (2) conduct cross-examinations of witnesses at the *hearing* to the extent reasonably required for a full and fair disclosure of all matters relevant to the issues in the *hearing*.

Summons to Witness

11.3 The *Appeal Board* may issue a summons to a witness on its own initiative or upon request of a party in accordance with the *Statutory Powers Procedures Act*, R.S.O. 1990, c. S.22.

Abuse of Process

11.4 The *Appeal Board* may make such orders or give such directions in proceedings before it as it considers proper to prevent abuse of its processes.

11.5 The *Appeal Board* may reasonably limit further examination or cross-examination of a witness where it is satisfied that the examination or cross-examination has been sufficient to disclose fully and fairly all matters relevant to the issues in the proceeding.

11.6 The *Appeal Board* may exclude from a *hearing* anyone, other than a person licensed under the *Law Society Act*, R.S.O. 1990, c. L.8 appearing on behalf of a party or as an *agent* if it finds that such person is not competent to properly represent or to advise the party or witness or does not understand and comply at the *hearing* with the duties and responsibilities of an advocate or adviser.

Part 12 – Hearing Procedures

Opening Procedures

12.1 The *Chair* shall call the *hearing* to order and read an opening statement outlining the procedure and format of the *hearing* process.

12.2 The *Chair* will read out the proceedings listed on the agenda.

Declaration of Pecuniary Interest

- 12.3 Where a *member* has any direct or indirect pecuniary interest, pursuant to the *Municipal Conflict of Interest Act*, R.S.O. 1990, c. M.50, in any proceeding that is before the *Appeal Board*, the *member* shall:
- (1) prior to any consideration of the appeal, disclose the interest and the general nature thereof;
 - (2) recuse him or herself from the *hearing* of that appeal;
 - (3) not attempt in any way whether before, during or after the *hearing* to influence the decision of the *Appeal Board*;
 - (4) where a part of a *hearing* is not open to the public, immediately leave that part of the *hearing* if the matter regarding the pecuniary interest is under consideration;
 - (5) at the *hearing*, or as soon as possible afterwards, file a written statement of the interest and its general nature with the *Coordinator*; and
 - (6) disclose the pecuniary interest at the next meeting which they attend, if the pecuniary interest was not disclosed by reason of the *member's* absence from the *hearing*.
- 12.4 A copy of each written statement filed in accordance with Section 12.3 (5) and a copy of each declaration recorded pursuant to Sections 5.5 and 5.6 shall be kept in the registry maintained for the *Appeal Board*.

Motions

- 12.5 The *Appeal Board* will hear motions regarding any *hearing* listed on the agenda.
- 12.6 The *Appeal Board* will hear motions for adjournment requests prior to the commencement of any *hearing*.
- 12.7 If a party brings a motion regarding a proceeding not listed on the agenda, the *Appeal Board* may decide to hear the motion at that time or order that it be brought at a later date.

Order of Presentation

- 12.8 Subject to any motions previously adopted by the *Appeal Board*, the *Chair* will indicate that the *Appeal Board* will now hear the first appeal on the agenda.
- 12.9 The *Chair* requests that the parties to an appeal identify themselves, including any witnesses who intend to give evidence on behalf of either party to the appeal.
- 12.10 The *Town's agent* may make an opening statement.
- 12.11 The *appellant* may make an opening statement.
- 12.12 The *Town's agent* is requested to present the decision or order to which the appeal applies, related evidence and witnesses.
- 12.13 The *appellant* may cross-examine each of the *Town's* witnesses and the *Town's agent* may re-examine those witnesses.
- 12.14 The *members* may ask questions of any witness, through the *Chair*.

Appellant's Presentation of the Appeal

- 12.15 The *appellant* may present evidence with respect to the appeal of the decision or order.
- 12.16 The *Appeal Board* will allow the *appellant* to complete their presentation before asking any questions, unless clarification is required before the presentation is completed.
- 12.17 The *Appeal Board* may, through the *Chair*, ask questions of the *appellant* or any of his or her witnesses to clarify any evidence presented.
- 12.18 The *Town's agent* may cross-examine the *appellant* or his or her witnesses and the *appellant* may re-examine those witnesses.

Other Representations; Right of Reply

- 12.19 After the *appellant's* presentation, the *Appeal Board* will hear from anyone else who wishes to make representations before the *Appeal Board* pertaining to the matter.
- 12.20 Persons giving evidence are subject to questions by the *Appeal Board*, the *appellant* and the *Town's agent*.
- 12.21 The *Town's agent* has the right of reply on matters which could not have been anticipated prior to hearing the *appellant's* evidence.

Closing Statements

- 12.22 At the conclusion of all evidence presented, both parties are entitled to make final submissions to the *Appeal Board*.

Part 13 – Appeal Board Decision

Decision Process

- 13.1 The *Appeal Board* may recess at any time to consider its final decision or any interim decision during the *hearing*.
- 13.2 If the *Appeal Board* requires, it may move into closed session upon adoption of the required motion, to deliberate and/or to draft a *Notice of Decision* or to consult with counsel for the *Appeal Board*. The *Appeal Board* shall give a written decision or may reserve its decision.
- 13.3 If the decision is reserved the *Chair* will advise the *appellant* that the *appellant* will be notified by registered mail of the *Appeal Board's* decision.
- 13.4 The decision of the *Appeal Board* is final and binding.

Notice of Decision

- 13.5 The *Coordinator* will forward notice of the *Appeal Board's* decision within 5 days of the making of the decision to all persons who received a *Notice of Hearing* and to everyone who appeared before the *Appeal Board* at the *hearing*.
- 13.6 The *Notice of Decision* shall be signed by all *members* of the *Appeal Board* that took part in the *hearing* and shall contain written reasons to support the decision.
- 13.7 The *Notice of Decision* shall contain a record of the proceedings, compiled by the *Coordinator*, which shall include:
- (1) list of persons who provided submissions;
 - (2) list of witnesses and for whom they testified;
 - (3) any interlocutory orders made by the *Appeal Board*; and
 - (4) all *documents* and evidence filed with the *Appeal Board*, subject to any limitations expressly imposed by any other Act.

Schedule B – Honourarium to Members

Amended by By-law 2020-81 effective October 27, 2020

1. With the exception of the *Chair*, each member who participates in a *hearing* date under this By-law shall be paid an honourarium of \$75.00 per scheduled hearing date.
2. The *Chair* who participates in a *hearing* date under this By-law shall be paid an honourarium of \$100.00 per scheduled hearing date.