



**BEING A BY-LAW TO ESTABLISH THE POSITION OF HEARING OFFICER FOR THE CORPORATION OF THE TOWN OF COBOURG.**

**Whereas** Council intends by this By-law to establish the position of Hearing Officer to whom may be delegated quasi-judicial and other authority under various Town by-laws.

**NOW THEREFORE, THE CORPORATION OF THE TOWN OF COBOURG BY ITS COUNCIL ENACTS AS FOLLOWS:**

**SHORT TITLE**

1. This By-Law may be referred to as the "Hearing Officer By-law".

**INTERPRETATION**

2. Unless otherwise stated:
  - a) a reference to any statute or regulation refers to a statute or regulation of Ontario as it may be amended or replaced from time to time;
  - b) a reference to a by-law refers to a by-law of the Town as it may be amended or replaced from time to time; and
  - c) a reference to a section, paragraph, clause, or schedule is a reference to this By-law's section, paragraph, clause, or schedule.
3. The headings in this By-law are for convenience only and do not form part of this By-law
4. If any part of this By-law is determined to be invalid by a court of competent jurisdiction, the invalid part is severed and the remainder continues to be valid.
5. In this By-law:
  - a) "**Administrative Penalty**" means an administrative penalty established by a Designated By-law.

- b) “**By-law**” means this by-law and any schedule to this by-law as they may from time to time be amended.
- c) “**CAO**” means the Town’s Chief Administrative Officer.
- d) “**Child**” means a child born within or outside marriage and includes
  - i. an adopted child; and
  - ii. a person whom another person has demonstrated a settled intention to treat as a child of the other person’s family
- e) “**Council**” means the Town’s Council
- f) “**Delegated Power of Decision**” means a power or right conferred by or under a Town 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.
- g) “**Hearing Officer**” means each person from time to time appointed pursuant to section 7.
- h) “**Municipality**” means a municipality in Ontario other than the Town that is a party to an agreement with the Town respecting the Town’s administration of the municipality’s administrative penalty system.
- i) “**Parent**” means a person who has demonstrated a settled intention to treat a child as a member of the person’s family whether or not that person is the natural parent of the child.
- j) “**Proceeding**” means a proceeding before a Hearing Officer and includes a hearing.
- k) “**Spouse**” means a person to whom the person is married or with whom the person is living in a conjugal relationship outside of marriage
- l) “**Town**” means The Corporation of the Town of Cobourg or the geographic area of the Town of Cobourg as the context requires.
- m) “**Town Clerk**” means the Municipal Clerk for the Town of Cobourg.

## **APPOINTMENT AND ELIGIBILITY**

6. The positions of Hearing Officers are established for the purpose of exercising Delegated Powers of Decision.
7. Hearing Officer appointments shall be delegated to the Director of Legislative Services/Municipal Clerk.
8. Hearing Officers may be appointed by the Director of Legislative Services/Municipal Clerk with the recommendation to the CAO in consultation with the Town Solicitor which recommendation must give preference to eligible candidates:
  - a) with knowledge of and experience in administrative law; and
  - b) of good character.
9. The following are not eligible for appointment as a Hearing Officer:
  - a) an employee of the Town or of a Municipality;
  - b) a member of Council or of a Municipality's council;
  - c) the Child of a person referenced in paragraphs a) or b);
  - d) the Parent of a person referenced in paragraphs a) or b);
  - e) the Spouse of a person referenced in paragraphs a) or b); or
  - f) a person indebted to the Town other than:
    - i. in respect of current real property taxes; or
    - ii. pursuant to an agreement with the Town with which the person is complying.
10. Each Hearing Officer will hold office until the earlier of the date on which the Hearing Officer resigns and the date on which the appointment is revoked by Council.
11. Each Hearing Officer will be remunerated at the rate from time to time established by Council.

## Hearings

12. The Town Clerk may determine the scheduling of Proceedings before a Hearing Officer with regard to the efficiency and timeliness of hearings processes and to the availability of Hearing Officers.
13. Proceedings before a Hearing Officer may be undertaken in person or electronically. The Town Clerk may establish standards and procedures that, in the opinion of the Town Clerk, reasonably enables a Proceeding to be undertaken electronically.
14. In any Proceeding, a statement respecting any matter related to the Proceeding purporting to be signed by a person authorized by a Town by-law or by a Municipality's by-law to undertake inspections or enforcement is, without proof of the office or signature of such person, 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 Proceeding.
15. A representative may act on behalf of and represent a person in respect of a Proceeding where the Hearing Officer is satisfied that:
  - a) the person is entitled to be heard by the Hearing 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**
  - c) the person has authorized in writing the representative to act on behalf of and to represent the person in the particular Proceeding;
  - d) the written authorization specifies the representative's qualification for the purpose of paragraph 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** upon which the representative purports to be exempt; and
  - e) the written authorization has been filed in the Proceeding and remains in effect.
16. If a person requires an interpreter for the purpose of any Proceeding before a Hearing Officer, the person must provide the interpreter at the person's own expense.

17. No person may 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 Proceedings otherwise open to the public, except in the following circumstances:

- a) no fewer than three (3) days prior to the Proceeding, the person gives written notice to the Town of the person's intention to request the Hearing Officer for permission to record the Proceeding 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 Proceeding are recorded; and
  - iii. the person delivers to the Town 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 Hearing Officer determines that the Proceeding will not be disrupted or delayed if approval is given;
- e) the Hearing Officer determines that the approval will not result in any prejudice to any party to the Proceeding;
- f) prior to the commencement of the Proceeding, the Hearing Officer authorizes the recording and has not revoked the authorization; and
- g) the recording is undertaken only in accordance with the Hearing Officer's approval including any terms or conditions to such approval.

18. Proceedings before Hearing Officers are subject to the *Statutory Powers Procedure Act*.

### **INDEPENDENCE OF HEARING OFFICER**

19. No person may attempt, directly or indirectly, to communicate with or influence a Hearing Officer in any way related to the determination of an issue respecting a Delegated Power of Decision in a Proceeding that is or will be pending 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 of the Proceeding

in which the issue arises. Failure to comply with this section constitutes an offence.

20. Section 18 does not prevent a Hearing Officer from seeking and receiving legal advice including from a lawyer as arranged through the Town's Legislative Services Division.

**GENERAL**

21. The functions of a secretary-treasurer will be provided for Hearing Officers by Town civic administration including the making and keeping of minutes and records of all applications and the decisions thereon and of all other official business of Hearing Officers

22. Section 253 of the *Municipal Act, 2001* respecting the inspection of records applies with necessary modifications to documents made or kept pursuant to section 20.

23. No proceeding for damages or otherwise may be commenced against the Town, a member of Council or an officer, employee or agent of the Town or a person acting under the instructions of the officer, employee or agent for any act done in good faith in the performance or intended performance of a duty or authority under this By-law or for any alleged neglect or default in the performance in good faith of the duty or authority.

Read and passed in Open Council on this      day of October, 2022.

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MAYOR

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MUNICIPAL CLERK

