

<b>City of Prince Albert</b> <b>Statement of POLICY and PROCEDURE</b>			
Department:	City Manager	Policy No.	<b>44.1</b>
Section:	City Clerk	Issued:	March 22, 2010
Subject:	<b>Property Maintenance Appeal Board Policy</b>	Policy Effective:	January 19, 2015
Council Resolution # and Date:	Council Resolution No. 0027 of January 19, 2015	Page:	1 of 13
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Issued by:	Terri Mercier, Corporate Legislative Manager	Dated:	March 22, 2010
Approved by:	Jim Toye, City Manager	Procedure Amendment:	

## **1. POLICY**

- 1.01 To establish the rules and provisions to regulate the appeal process and conduct of business of The Property Maintenance Appeal Board.

## **2. PURPOSE**

- 2.01 The Property Maintenance Appeal Board Policy is to establish clear guidelines, rules of procedures, and responsibilities of the Secretary and Board members in carrying out the appeal process.

## **3. SCOPE**

- 3.01 This Statement of Policy and Procedure applies to the Property Maintenance Appeal Board members, the Board Secretary, City Representatives, and City Council.

## **4. RESPONSIBILITY**

### **4.01 COUNCIL**

The duties and responsibilities of Council are to:

- Appoint members to the Board and determine the manner in which vacancies are to be filled;
  - Approve the remuneration and expenses, if any, payable to each member; and,
  - Appoint a secretary to the Board, and prescribe the term of office, duties and remuneration.
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#### 4.02 CHAIRPERSON

The duties and responsibilities of the Chair are to:

- Serve as Chairperson at Hearings and Board meetings, and assist in the scheduling of hearings;
- Ensure Board directives, policies, procedures and appropriate conduct are adhered to at the Hearings;
- Provide leadership and attend to all matters necessary for the proper operation of the Board, ensuring that the City's obligations are met in accordance with the legislative requirements;
- Ensure legal counsel is provided in the areas relevant to the jurisdiction of the Board and in the procedures of administrative tribunals, as required;
- Provide guidance and resources to members regarding the process of an administrative tribunal or quasi-judicial board;
- Declare any pecuniary interest as described in Section 115 of The Cities Act;
- Appoint Panel Chairs;
- In collaboration with the Panel members, formulate the decision of the appeal and sign upon approval; and,
- Carry out the responsibilities of members as set out below.

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#### 4.03 BOARD MEMBERS

The duties and responsibilities of the Board members are to:

- Attend Hearings and Board meetings, and advise schedule of availability;
- Act as the Chairperson when required;
- Declare any pecuniary interest as described in Section 115 of The Cities Act;
- Be familiar with the process of an administrative tribunal or quasi-judicial board;
- Review materials and prepare notes prior to hearing;
- Participate at the Hearing by asking questions and engage in discussion/deliberation and decision-making in accordance with established procedures; and,
- In collaboration with the Chair, formulate the decision of the appeal.

#### 4.04 SECRETARY

The duties and responsibilities of the Secretary are to:

- Process appeals, schedule hearings, and serve Notice of Hearing and other materials on the applicable parties.
  - Process requests for recording of hearings and production of a transcript.
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- Format and distribute final Decisions to members for approval, and ensure Chair and Secretary execute the Decisions once approved;
- Distribute written Decisions to the applicable parties;
- In the event of a withdrawal of an Appeal, notify all parties; and,
- Notify members of training opportunities and provide applicable resource materials, as necessary.

#### 4.05 BYLAW ENFORCEMENT AND DESIGNATED CITY REPRESENTATIVES

The duties and responsibilities of Bylaw Enforcement and designated City Representatives are to:

- Investigate allegations of contraventions of the Act or Bylaws, and, if deemed appropriate, by written Order, advise the owner/occupant of the land, building or structure to remedy the contravention, pursuant to Section 328(1) of the Act;
- Submit any related materials, photos or documentation prior to or at the Hearing; and,
- Attend hearings and provide representation on behalf of the City.

### 5. DEFINITIONS

5.01 “Act” means *The Cities Act*.

5.02 “Appellant” means the person(s) or representative of the person(s) who submits an appeal to an Order to Remedy Contravention.

5.03 “Board” means the Property Maintenance Appeal Board.

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- 5.04 “Maintenance and Occupancy Bylaw” means Bylaw No. 38 of 2011 and any amendments, or any successor to that Bylaw.
- 5.05 “Order” means Order to Remedy Contravention that is issued by an authorized Representative or Inspector employed by The City.
- 5.06 “Property Amenities Bylaw” means Bylaw No. 14 of 2007, and any amendments, or any successor to that Bylaw.
- 5.07 “Property Maintenance Appeal Board Bylaw” means Bylaw No. 3 of 2015, and any amendments, or any successor to that Bylaw.
- 5.08 “Respondent” means Bylaw Enforcement Officer, Inspector and/or employee of The City who has authority to issue an Order to Remedy Contravention.
- 5.09 “Secretary” shall be the City Clerk or designate, as approved by Council.
- 5.10 “Stay of Order” means the act of temporarily stopping or suspending a judicial proceeding either in full or in part.

## **6. REFERENCES & RELATED STATEMENTS OF POLICY & PROCEDURE**

- 6.01 Sections 328 and 329 of the Act;
- 6.02 Property Maintenance Appeal Board Bylaw No. 3 of 2015, and any amendments, or any successor to that Bylaw;
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6.03 Property Amenities Bylaw No. 14 of 2007, and any amendments, or successor to that Bylaw; and,

6.04 Maintenance and Occupancy Bylaw No. 38 of 2011, and any amendments, or successor to that Bylaw.

## **7. PROCEDURE**

### **7.01 PROCESSING APPEALS**

#### **7.01.1 RECEIPT OF APPEAL APPLICATIONS**

A Notice of Appeal must be submitted to the Board Secretary within **15 days** after the date of the Order, pursuant to Section 329(1) of the Act.

A Notice of Appeal shall be made by completing and submitting a Notice of Appeal form, which is provided with the Order, and shall contain the following information:

- ◇ name, mailing address and phone number(s) of the Appellant
- ◇ address of property being appealed
- ◇ issue date of the Order
- ◇ grounds of appeal/reasons in support of appeal
- ◇ date the Notice of Appeal is being submitted
- ◇ signature of the Appellant

Upon receipt of a Notice of Appeal, the Secretary shall, as soon as reasonably practicable, advise Bylaw Enforcement and the City Representative that a Notice of Appeal has been received.

In the event that a copy of the Order is not attached to the Notice of Appeal, the Secretary shall request a copy of the Order from Bylaw Enforcement.

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#### 7.01.2 APPEAL FEES

There is no fee required to appeal to the Property Maintenance Appeal Board.

#### 7.01.3 STAY OF THE ORDER

An appeal to the Board does not operate as a Stay of the Order appealed from, unless the Board, on an application by the Appellant, decides otherwise.

An application for a Stay must be made in writing and forwarded to the Board Secretary.

The Board may hear a Stay application separate from the main appeal, and may determine a Stay application through e-mail, fax, telephone or informal meeting.

The Appellant, along with the respective parties are given notice of the Stay application, and the Board's decision on the matter.

#### 7.01.4 NON-COMPLIANCE WITH APPEAL DEADLINE DATE

The Secretary shall determine whether the Notice of Appeal has been submitted by the Appellant within 15 days after the date of the Order.

If the Notice of Appeal has been received after the 15-day appeal period, it is deemed to be dismissed, and the Secretary will advise the Appellant accordingly.

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#### 7.01.5 FILING OF WRITTEN MATERIAL, MAPS, PLANS, DRAWINGS

All materials and documentation received from either party will be marked "Exhibit" and carry the appropriate designation as follows:

- ◇ Materials from the Appellant will be marked A-#;
- ◇ Materials from the Respondent will be marked R-#; and,
- ◇ Materials from the Board will be marked B-#

Copies of submitted materials will be provided to all parties and the Board members prior to the Hearing date, if time permits.

The Board may consider additional materials at the Hearing, and such materials will be identified in the same manner as noted above.

#### 7.01.6 SCHEDULING HEARINGS

The Secretary shall schedule all Hearings with due consideration for the schedule of the other parties, within reasonable means.

The Secretary will determine the order of Hearings based on their complexity, and in consultation with the Chair if required.

The Board shall hold Hearings in a timely fashion following receipt of an appeal.

A Notice of Hearing must be served to all parties in advance of the date fixed for hearing the appeal by either registered mail, personal delivery or another agreeable method of service.

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### 7.01.7 RECORDING OF HEARINGS

The Board shall record the Hearings for its own purposes. Access to the recordings will be limited to the Board members and the Secretary.

A party to an appeal may request that a Hearing or a part of a Hearing be recorded and may also request that a transcript be prepared, subject to the following conditions:

- a) A request, in writing, must be made to the Secretary at least two full working days before the Hearing.
- b) The Secretary, in consultation with the Chair, shall issue an Order for Transcript that the recording is made by an official court reporter.
- c) The costs of the recording will be charged to the applicable party.
- d) The cost of obtaining a transcript of the proceedings will be charged to the applicable party.

No person other than the Board or a court reporter present, pursuant to an Order of the Chair, will be permitted to take or attempt to take a photograph, motion picture, audio recording or other record capable of producing an oral or visual reproduction by electronic or other means at a Board Hearing.

### 7.01.8 WITHDRAWAL OF APPEALS

Written requests to the Secretary to withdraw an appeal can be accommodated at any time prior to the Hearing.

The Secretary will notify all parties of the withdrawal.

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## 8.01 HEARINGS

Hearings of the Board are open to the public and the media may attend.

### 8.01.1 SCOPE OF THE APPEAL

The scope of the appeal will be the issues outlined by the Respondent in the Order.

### 8.01.2 HEARING DOCUMENTS

The Hearing Documents consist of the Notice of Hearing, the Order and the Notice of Appeal, and any additional evidence submitted by the Appellant or the Respondent.

The Secretary will forward copies of the hearing documents to each party and the Board members prior to the Hearing.

The Secretary is responsible to keep the original(s) of all documents on record.

### 8.01.3 FAILURE TO APPEAR

If the Appellant and/or Respondent are not present at the scheduled Hearing time, the Board will wait five (5) minutes and then proceed in the absence of the Appellant and/or Respondent. If there is more than one appeal scheduled, the appeal will be moved to the end of the Hearings. If the Appellant and/or Respondent is still not present at the end of the session, the appeal may be considered in their absence. If the Board decides to consider the appeal in the absence of the Appellant and/or Respondent, the Board will proceed with the appeal by adopting the evidence and then hearing the statement/response of the party present.

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In the event the Board determines that it will not hear the appeal on the scheduled date, the appeal will be postponed to an alternative date in which the Appellant and/or Respondent, or an authorized representative, will be in attendance to present evidence and answer questions of the Board. Once a Hearing has been postponed and rescheduled to a later date, the Board will proceed with the Hearing on the rescheduled date whether all parties are in attendance or not, unless special circumstances arise.

Requests for postponements may be considered and will be at the discretion of the Board. Such requests may be granted unless they are recurrent and deemed by the Board to be unreasonable and/or stalling the process. Requests for postponements must be placed before the Board for consideration and determination of a suitable date.

#### 8.01.4 FILING OF ADDITIONAL MATERIALS/DOCUMENTS

The Board may consider additional materials at the Hearing, and such materials will be identified in the same manner as noted in Section 7.01.5 of this Policy.

If the Board refuses to accept additional material at the Hearing, the material will be identified as “information only” and become part of the record, but not included as evidence or marked as an Exhibit.

In the event that the Appellant and/or the Respondent has supplemental material to be presented at the Hearing, in response to a submission from either party, the material will be received by the Secretary and submitted to the Board for consideration at the time of the Hearing. If the Board agrees to accept the material and there is no objection from either party to the appeal, the material will be marked as an “Exhibit”.

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#### 8.01.5 EXPERT WITNESSES

Where an Appellant or Respondent wishes to call an expert witness to the Hearing, they must “qualify” the expert before the Board will grant the person expert witness status. This must occur at the beginning of that witness’s testimony.

The witness will testify about his/her area of expertise, and the other party will be provided an opportunity to cross-examine the witness. Once the cross examination is complete, the board will ask the other party if there is an objection to the acceptance of the witness as an expert. If there is an objection, the objections shall be outlined and the parties then can make argument on these points. If there is no objection, the Board must make a decision on whether to accept the witness as an expert or not.

#### 8.01.6 PROCEDURES FOR CHAIRING A HEARING

The Chair will be in charge of procedural rulings and any rulings will be final for the purpose of the Hearing.

All comments and questions should be addressed through the Chair.

### 9. **DECISIONS**

The Board will make a determination based on the evidence presented at the hearing and within Section 329 of the Act.

The Chair, or designate, will draft the written Decision, including providing reasons for each Decision, and provide the draft to the Secretary. All members present at the hearing will be provided an opportunity to review and make comments prior to final version of the Decision.

The Secretary will provide administrative/secretarial support, as well as a

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decision template for the Board.

Decisions shall be signed by the Chair or Acting Chair and the Secretary.

The Board must render its decision in writing and forward same by registered mail or personal service to the Appellant and the Respondent. The Decision will be accompanied with information on the right of appeal to the court on a question of law or jurisdiction only.

In the event an issue arises after the Hearing and/or the Decision is rendered, the Chair may request additional information/evidence from the Appellant and/or the Respondent. If the Board determines that an amendment needs to be made to the Decision, all parties will be advised. If there is a dispute regarding a proposed amendment to the Decision, the Board will consult with its legal counsel.

In all cases the Board will reserve its Decision, meaning that it will deliver its Decision at a later date.

A decision of the Board may be appealed to the Court on a question of law or jurisdiction only within 30 days after the date the decision is rendered.