

# **ENVIRONMENTAL MANAGEMENT APPEALS BOARD**



**POLICY AND PROCEDURES**

(2022)

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## STRUCTURE

### 1. COMPOSITION

The Environmental Management Appeals Board is appointed by resolution of City Council. Council shall appoint five members to hear and determine appeals filed against an Order made by an Environmental Protection Officer/Municipal Inspector, pursuant to *Bylaw No. 9466 - The Sewer Use Bylaw, 2017*, Sec. 71; *Bylaw No. 8310 - The Waste Bylaw, 2004*, Sec. 71; and *Bylaw No. 9772 - The Drainage Bylaw, 2021*, Sec. 18 and in accordance with Section 329 of *The Cities Act*.

Members are appointed for a two-year term and can be reappointed.

**The Board shall consist of the same five appointees who form the Property Maintenance Appeals Board.**

### 2. JURISDICTION

The Environmental Management Appeals Board adjudicates appeals under the provisions of Sec. 329 of *The Cities Act*. *Bylaw No. 9466 - The Sewer Use Bylaw, 2017*; *Bylaw No. 8310 - The Waste Bylaw, 2014* and *Bylaw No. 9772 - The Drainage Bylaw, 2021*.

*Bylaw No. 9466 - The Sewer Use Bylaw, 2017* provides for the purposes to provide for the regulation and use of the City's sanitary sewer system; regulate all direct and indirect discharges to any part of the sanitary sewer; prevent damage to or misuse of the sanitary sewer system and its processes; levy sanitary sewer service charges for services provided, including setting rates, fees and charges for various types of permits and uses; set conditions required for connection to the sanitary sewer system; protect human health and safety; assist the City in complying with laws and regulatory instruments to which it is subject; and protect the environment.

*Bylaw No. 8310 - The Waste Bylaw, 2014* provides for the purpose to protect the health and welfare of people and the environment by regulating the collection, handling and disposal of waste within the City.

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*Bylaw No. 9772 - The Drainage Bylaw, 2021* provides for the purpose to regulate grading and surface drainage on private properties to minimize adverse effects.

The Bylaws are not intended to relieve any person from complying with any other Act, Regulation or Bylaw relating to standards regarding the collection, handling and disposal of waste and recyclable materials.

Any inconsistencies between the Bylaw, *The Cities Act*, Canadian Standards Association (Grp B481), *Pest Control Products Act*, The Private Sewage Works Regulations, *The Nuclear Safety and Control Act*, and any other bylaw relating to the protection of the environment, disposal of waste and recyclable material will default to the provision that establishes the higher standard to protect the health, safety, and welfare of the general public.

### **3. REMUNERATION**

*Bylaw No. 7804*, passed by City Council on November 30, 1998, effective January 1, 1999, provides for each member of the Environmental Management Appeals Board to receive payment of \$25.00 for each meeting attended by the member; and in addition, the member who writes the decision of the Board shall receive a further \$25.00 for each decision written by the member.

### **4. CHAIRPERSON**

The duties and responsibilities of the Chair are to:

- ◇ Assume responsibilities January 1 to December 31 of the year appointed.
- ◇ Provide leadership and attend to all matters necessary for the proper operation of the Environmental Management Appeals Board, ensuring that the City's obligations are met in accordance with the requirements contained in *Bylaw No. 9466 - The Sewer Use Bylaw, 2017*; *Bylaw No. 8310 - The Waste Bylaw, 2004*; and *Bylaw No. 9772 - The Drainage Bylaw, 2021* and Sec. 329 of *The Cities Act*.
- ◇ Ensure legal counsel is provided in the areas relevant to the jurisdiction of the Environmental Management Appeals Board and in the procedures of administrative tribunals, as required.

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- ◇ Take responsibility for training/orientation of Board members regarding hearings, rules of evidence, decision-making and decision-writing of an administrative tribunal or quasi-judicial board.
- ◇ Serve as Chair at the hearings.
- ◇ Sign decisions of the Board.
- ◇ Ensure Board directives, policies and appropriate conduct are adhered to at the hearings.
- ◇ Carry out the responsibilities of members as set out below.

### 5. **MEMBERS**

The duties and responsibilities of the members are to:

- ◇ Attend hearings and advise the Secretary of the Board if unable to attend or anticipate arriving late.
- ◇ Be familiar with hearing procedures.
- ◇ Review the hearing documents prior to the hearing.
- ◇ Contribute at the hearing by asking questions and participating in discussion/deliberation and decision-making in accordance with established procedures.
- ◇ Declare any conflict of interest with respect to appeals and inform the Secretary of the Board of any potential conflict of interest well in advance of the hearing.
- ◇ Render a decision in writing, together with reasons, following conclusion of the hearing.

### 6. **SECRETARY**

The Secretary is responsible for all administrative and operational matters of the Board to ensure compliance with relevant sections of *Bylaw No. 9466*, *Bylaw No. 8310*; and *Bylaw No. 9772* and Sec. 329 of *The Cities Act*.

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The duties and responsibilities of the Secretary are to:

- ◇ Serve Notice of Hearing on the Appellant; the owner of the property, where different from the Appellant; Environmental Protection Officer; and City Solicitor.
- ◇ Schedule hearings and produce hearing documentation for Board members.
- ◇ Process requests for recording of hearings and production of a transcript.
- ◇ Sign decisions of the Board.
- ◇ Distribute written decisions to the Appellant, Environmental Protection Officer, and City Solicitor; and to all persons who made representations at the public hearing, by registered mail, including notification of the right of appeal to the court on a question of law or jurisdiction.

### **7. LEGAL COUNSEL**

The Board may retain the services of legal counsel that may be necessary to assist it in the discharge of its responsibilities. The Chair will recommend legal counsel and have the recommendation ratified by the Board members.

### **8. BOARD MEETINGS**

The Secretary of the Board shall ensure that at the first meeting of the Board each year, members elect a Chair for the year and they may also elect a Vice-Chair.

The Secretary shall schedule hearing dates for the year, and this schedule shall act as a guideline. There may be times when hearings will need to be held between scheduled hearing dates.

Meetings will be conducted in accordance with *Robert's Rules of Order*.

### **9. ISSUES/ROLES**

*Role of an Environmental Management Appeals Board Member vs. Other Positions*

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Environmental Management Appeals Board members are appointed for their knowledge and expertise in standards regarding the collection, handling and disposal of waste and recyclable materials. Many Board members hold other positions in the community that should be kept separate from their role as Board member. This does not mean that members cannot rely upon their general knowledge of related matters, but it does mean that if members rely upon any specific knowledge of a matter that they gained outside the hearing, they must disclose the point to the parties so they have an opportunity to respond. If in doubt, the safest course of action is to disclose.

### *Independence and Impartiality: The Rule against Bias*

Environmental Management Appeals Board members have a responsibility to look at the way they conduct themselves not from their own points of view, but from the perspective of others. Board members must act independently and impartially, much like judges. A decision-maker must hear a complaint with an open mind and without being influenced by external forces. A bias exists when a decision is influenced by a monetary or personal interest, or anything else that would influence the decision. Bias can arise from things a Board member may have written or said about the case or about the parties.

Decision makers must not only avoid bias, but also avoid creating a perception of bias. A party challenging a Board decision in court does not have to prove actual bias; a reasonable perception of bias is enough. A perceived bias exists when the circumstances suggest to a reasonable observer that there may be bias, even though the Board member is not actually biased.

The perception that persons other than Board members have been actively involved in the decision making process is a common source of bias allegations. The “test” is whether a reasonable observer would think that, in the circumstances, a fair hearing is possible.

### *Out-of-Hearing Conduct*

In avoiding a perception of bias, Board members should not be seen talking with individuals from any of the parties inside or outside the hearing room. Board members should be cautious during breaks and ensure that they are not mingling with any party involved in a complaint. Board members should remember that few places are totally private. Any discussion between Board members should take place only in a confidential location. No discussion of the hearing should take place outside the hearing room, except with fellow Board members.



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### *In-Hearing Conduct*

All Board members have a responsibility not only to be fair, but also to appear fair. This includes not acting inappropriately (rudeness, overly aggressive conduct, lack of impartiality, indiscretion, or closed-mindedness).

This has two implications:

- Board members have a responsibility to look at the way they conduct themselves, not only from their point of view, but also from the perspective of others.
- Board members should not take criticisms, comments, or advice on the issue of fairness as an affront to their dignity. It may be that a member created an unintended impression.

Body language and tone of voice can convey a wrong message to a complainant. Lack of eye contact raised eyebrows, an angry, sympathetic, incredulous, or impatient tone of voice can conflict with the words a Board member uses. All actions and expressions contribute to the appearance of fairness.

Parties are often willing to accept bad news if they feel that they have been heard through a fair process by an open-minded Board. But an air of impatience, indifference, or hostility can ruin that impression. Try to look at the proceedings through the eyes of the parties who may be directly and personally affected by your Board's decision.

## PROCESSING APPEALS

### **1. RECEIPT OF APPEAL APPLICATIONS**

A Notice of Appeal must be received within **15 days** after the date of the "Order to Remedy Contravention".

A Notice of Appeal can be made by filing a written Notice of Appeal setting out the reasons for the appeal. An application form is provided within the Order to Remedy for use by the property owner in filing an appeal notice.

The Notice of Appeal must be served on both the Environmental Management Appeals Board (Secretary) and the Environmental Protection Officer.

The Notice of Appeal shall contain the following information:

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- ◇ address of the subject property
- ◇ name and address of the Appellant
- ◇ nature of infraction
- ◇ reasons in support of appeal
- ◇ date of the Order of the Environmental Protection Officer
- ◇ date of Notice of Appeal

### 2. **APPEAL FEES**

There is no fee required to appeal to the Environmental Management Appeals Board.

### 3. **STAY OF THE ORDER**

An appeal to the Environmental Management Appeals Board does not operate as a stay of the Order appealed from unless the Environmental Management Appeals Board, on an application by the Appellant, decides otherwise. (*Sec. 329(2) of The Cities Act*).

The following statement has been incorporated into the Notice of Hearing:

*“PLEASE NOTE that pursuant to Sec. 329(2) of The Cities Act, an appeal to the Environmental Management Appeals Board does not operate as a stay of the Order, unless the Board, on an application from the Appellant, decides otherwise. An application for a stay must be made in writing and forwarded to the Secretary, Environmental Management Appeals Board, City Clerk’s Office, City Hall, 222 3<sup>rd</sup> Avenue North, Saskatoon, SK S7K 0J5.”*

The Act is structured for the Board to hear a stay application separate from the main appeal and quicker than the main appeal. The Board may determine a stay application through email, telephone or meeting. The Respondent should be given notice of any stay application. A stay application will depend on the facts.

### 4. **NON-COMPLIANCE WITH APPEAL DEADLINE DATE**

The Secretary shall determine whether the Notice of Appeal has been received from the Appellant within the 15-day appeal deadline outlined in Section 329(1) of *The Cities Act*. If the Notice regarding an appeal has been received late, it is deemed to be dismissed. There is no provision to extend the 15-day appeal

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deadline for receipt of a late Notice of Appeal for an Order to Remedy Contravention, as the Order stipulates dates on which certain action must be taken.

### **5. *FILING OF MAPS, PLANS, DRAWINGS, WRITTEN MATERIAL***

Materials received from either party will be stamped “For Identification Only” and carry the appropriate designation (i.e. the Notice of Appeal will be marked A.1; the Order to Remedy will be marked R.1; and the Notice of Hearing will be marked as a Board item, B.1). Copies of all materials received in advance of the hearing will be provided to the parties and the Board members prior to the hearing date. Consideration will be given at the hearing to formalizing all documents as “Exhibits” and identifying them accordingly.

Any material received by the Secretary and rejected as an Exhibit at the hearing, will be identified as “information only” and become part of the file, but not included as evidence or marked as an Exhibit.

In the event that the Appellant and/or the City 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 as additional documentation to the Board 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.

### **6. *SCHEDULING OF APPEALS***

The Secretary shall schedule all appeals with due consideration for the Board members, the Environmental Protection Officer, the Civic Administration, and the Appellants.

There is no timeline for the Board to hear an appeal; however, the Board will hold hearings in a timely fashion following receipt of an appeal. A Notice of Hearing must therefore be served in advance of the date fixed for hearing the appeal.

As a matter of practice, for the Appellant only, the Notice of Hearing will be forwarded by registered mail. This will be done in order to prove service of notice, if necessary. If the Order to Remedy was written up by a Municipal Inspector from Public Health, the Notice will be provided to both the Chief Public Health Inspector and the Chief Property Maintenance Inspector. If Public Health

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has not been involved in the Order to Remedy there is no need to provide them with a Notice of Hearing.

The Notice of Hearing forwarded to the Appellant by registered mail is deemed to have been received on the 5<sup>th</sup> day following mailing.

Notices to Appellants will include a copy of *Bylaw No. 8310*, *Bylaw No. 9466* and/or *Bylaw No. 9772* as well as a copy of an "Information Sheet" (Appendix A).

As a standard practice, it is expected that the Appellant will attend on the scheduled hearing date. There may be some instances where the Appellant does not wish to attend and provides the Board with the authority to proceed in the Appellant's absence. The Secretary will be required to relay this message to the Board, either in writing prior to the hearing or verbally at the hearing.

In cases where the Appellant does not show up at the hearing without prior notice, the Board will wait 15 minutes and then proceed in the absence of the Appellant. The Board will proceed with the appeal by adopting the written evidence and then hearing the rebuttal of the Environmental Protection Officer.

In the event the Board determines that it should not hear the appeal on the scheduled date, the appeal will be postponed to an alternative date in order to ensure that the Appellant or a representative is 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 the Appellant is 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.

Hearings will be scheduled on the first and third Wednesday of each month commencing at 3:30 p.m. The Secretary will determine the order of hearings based on each one's complexity. The Notice of Hearing will indicate the time allotted for each appeal. Depending on the complexity of the appeal, an effort will be made to keep each hearing to a maximum of 30 minutes. Deliberations on the Board's decision will take place following completion of all hearings on the docket.

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### **7. *RECORDING OF HEARINGS***

As a matter of practice, the Environmental Management Appeals Board does not tape its proceedings.

A party may request that a hearing or a part of a hearing be recorded and a party may also request that a transcript be prepared. Where such a request is made to the Secretary of the Board at least two full working days before the hearing, the Board Chair shall issue an Order (Appendix B), in writing that the recording be made by an official Court Reporter. The costs of the recording will be charged against the requesting party. If a transcript is not requested at the time that the recording is requested, the transcript may be requested by either party at a later date. In any event, the party requesting the transcript will bear the cost of such request.

If the Board determines that it wishes to record a hearing for its own internal purposes, such recording will not be provided to the parties. Access to the recording tapes will be limited to the Board members and the Secretary of the Board.

A summary of proceedings (hearing notes) for the use of Board members only, if necessary, will be recorded in written form by the Secretary of the Board, in keeping with the categories outlined on the Record of Decision form.

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.

### **8. *WITHDRAWAL OF APPEALS***

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

Where the withdrawal notification has been received after the documents have been distributed to the Environmental Protection Officer and Board members, the Secretary will undertake to notify those parties of the withdrawal.

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### CONFLICT OF INTEREST

The onus is on each Board member to make immediate disclosure to the Secretary of the Board, upon becoming aware that he/she is or may be in a conflict of interest in connection with an appeal. Where the possibility of a conflict exists, a member must not sit in on that hearing. If the member becomes aware of a conflict during a hearing, the member must immediately advise the Chair, excuse himself/herself from the remainder of the hearing, and take no part in deliberations on the Decision.

Where there is merely a possibility of a conflict, the best course of action is always to withdraw from the hearing. It is costly for all concerned if Board decisions are challenged on the basis of perceived bias, and a reasonable perception of bias (rather than actual proof of bias) is all that needs be shown to invalidate the Board's decision.

It is not possible to outline all circumstances where conflicts of interest might arise for Board members, but the following examples represent clear instances where a Board member should disclose his/her potential conflict:

- The member is a director or officer or shareholder, or has some other material interest in any "person" (including a corporation or partnership) that has a direct interest in the appeal. "Material interest" will include the existence of a material contract between the Appellant and the "person" in which the member has a material interest.
- The member is a director or officer or shareholder, or has some other material interest in any "person" (including a corporation or partnership) that is a direct business competitor with the Appellant.
- The member is a director or officer or shareholder, or has some other material interest in any "person" (including a corporation or partnership) that has a direct interest in the appeal.
- The member has any other pecuniary interest in the outcome of the appeal.
- The Appellant is a member of the member's family, or is a friend of the member.

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- The member bears personal antipathy towards the Appellant.
- There is, for some other reason, a reasonable basis for believing that the member may not act impartially towards one of the parties.

“Pecuniary interest” is defined under Section 115 of *The Cities Act*, as follows:

(1) Subject to subsection (2), a member of council has a pecuniary interest in a matter if:

(a) the member or someone in the member’s family has a controlling interest in, or is a director or senior officer of, a corporation that could make a financial profit from or be adversely affected financially by a decision of council, a council committee or a controlled corporation; or

(b) the member of council or a closely connected person could make a financial profit from or be adversely affected financially by a decision of council, a council committee or a controlled corporation.

(2) A member of council does not have a pecuniary interest by reason only of any interest:

(a) that the member or a closely connected person may have as an elector, taxpayer or public utility customer of the city;

(b) that the member or a closely connected person may have by reason of being appointed:

(i) by the council as a director of a company incorporated for the purpose of carrying on business for and on behalf of the city; or

(ii) as the representative of the council on another body;

(c) that the member or a close connected person may have with respect to any allowance, honorarium, remuneration or benefit to which the member or person may be entitled by being appointed by the council to a position described in clause (b);

(d) that the member may have with respect to any allowance, honorarium, remuneration or benefit to which the member may be entitled by being a member of council;

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(e) that the member or a closely connected person may have by being employed by the Government of Canada, the Government of Saskatchewan or a federal or provincial Crown corporation or agency, except with respect to a matter directly affecting the department, corporation or agency of which the member or person is an employee;

(f) that someone in the member's family may have by having an employer, other than the city that is monetarily affected by a decision of the city;

(g) that the member or a closely connected person may have by being a member or director of a non-profit organization as defined in Section 125 or a service club;

(h) that the member or a close connected person may have:

(i) by being appointed as the volunteer chief or other volunteer officer of a fire or ambulance service, emergency measures organization or other volunteer organization or service; or

(ii) by reason of remuneration received as a volunteer member of any of those voluntary organizations or services;

(i) that the member of a closely connected person may hold in common with the majority of electors of the city or, if the matter affects only part of the city, with the majority of electors in that part;

(j) that is so remote or insignificant that it cannot reasonably be regarded as likely to influence the member of council;

(k) that a member may have by discussion or voting on a bylaw that applies to businesses or business activities when the member or a closely connected person has an interest in a business, unless the only business affected by the bylaw is the business or the member or closely connected person; or

(l) that the member may have by being the publisher of a newspaper who publishes advertisements for or on behalf of the city in that newspaper, as long as only the regular advertising rate is charged and the advertisement before council for consideration is for a notice or other matter required by statute or regulation to be published in a newspaper.



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(3) Clause (2)(g) and (h) do not apply to a member of council who is an employee of an organization, club or service mentioned in those clauses.

A suggestion by a party to an appeal that a member may be in a conflict of interest, or that there is reason to believe that the member is biased or will not be impartial, must never be dismissed out of hand. The Board should always take the time to consider whether there is a reasonable apprehension of bias. The Board Chair may wish to consult with counsel to the Board if need be. Where the allegation of conflict or bias is clearly unfounded, then after deliberation, the Board may proceed as originally constituted. If there is real doubt, the simple and sensible solution is to, as the member, to remove himself/herself from participating in that particular hearing in order to avoid future challenges.

Bear in mind that the Board must consider not only actual bias, but the perception of bias.

## HEARINGS

Hearings of the Environmental Management Appeals Board are open to the public and the media may attend. This does not equate to full media access. (See page 9 re: taping, etc. of hearings).

### **1. SCOPE OF THE APPEAL**

The scope of the appeal will be the issues outlined by the Environmental Protection Officer in the Order to Remedy Contravention.

### **2. HEARING DOCUMENTS**

Hearing documents will be prepared for each Board member and forwarded by courier or regular mail prior to the hearing date. The documents will include the Order to Remedy issued by the Environmental Protection Officer, the Notice of Appeal from the Appellant and the Notice of Hearing, as well as any additional evidence submitted by the Appellant or the Environmental Protection Officer.

The hearing documents will be provided to the five Board members, the Municipal Inspector and the Appellant. The Secretary will keep the original copies of all documents on file.

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All documents will be stamped "For Identification Only" followed by an A (Appellant), R (Respondent) or B (Board) designation and a consecutive number. Materials received from the Appellant will be marked "A"; materials from the Environmental Protection Officer will be marked "R" and materials provided by the Board Secretary, such as the Notice of Hearing, will be marked "B". For example the Notice of Appeal will be marked A.1.

The Notice of Hearing will outline the time set aside for the hearing.

### **3. QUORUM**

A quorum shall consist of three members [Sec. 71(2) of *Bylaw No. 8310* and Sec. 71(3) of *Bylaw 9466*].

### **4. CONDUCTING THE HEARINGS**

- The Board Chair will read the opening statement to commence the session.
- The Chair will introduce the Board members, Board Secretary and Court Reporter (if present).
- The Chair will ask the City's representative to introduce himself/herself and any other representatives of the City present.
- The Chair will call the Appellant forward to state his/her name for the record and introduce any other representatives present on his/her behalf.
- The Chair will review the documents received to date, and if there are no objections from either party, the documents will be marked as official Exhibits.
- The Chair will ask the City's representative to take the affirmation (this need be done only once if the same representative of the City will be in attendance for additional hearings), and present evidence.

#### **Affirmation (ask the following question)**

***Do you solemnly affirm that the evidence you are about to give in this matter is the whole truth and nothing but the truth?***

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- The Chair will ask the Appellant to take the affirmation and present his/her evidence.
- Following presentation of evidence, the Chair will ask both parties if they have any questions of each other.
- Board members will ask any questions they might have.
- The Chair will ask the Appellant if there is any additional evidence to present. This is not an opportunity for the Appellant to repeat the evidence already presented.
- The Chair will close the hearing and indicate that a written decision will be rendered by the Board and forwarded by registered mail.

### **5. *FAILURE TO APPEAR***

If the Appellant is not present at the scheduled hearing time, the appeal will be moved to the end of the docket, if there is more than one appeal scheduled. If the Appellant is still not present at the end of the session, the appeal may be considered in the Appellant's absence. If the Board decides to consider the appeal in the absence of the Appellant, then any written materials filed by the Appellant will be reviewed and the Environmental Protection Officer will be given an opportunity to respond and/or make a recommendation.

### **6. *EXPERT WITNESSES***

Where an Appellant or the City's representative wishes to call an expert witness, (i.e. a person who has specialized training and expertise in some or all of the issues in the hearing) they will have to "qualify" the expert before the Board will grant the person expert witness status. This will occur at the beginning of that witness' testimony. The party calling the witness will get the witness to testify about his/her area of expertise, and then will ask the Board to accept the witness "...as an expert in...". The other party will then get an opportunity to cross-examine the witness on his/her expertise. Once that 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. The objecting party might argue, for example, that the witness is not an expert at all, or that the witness' expertise does not support the description of the expertise put

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forward by the party calling the witness. The Board must then decide whether to accept the witness as an expert as requested by the party calling the witness (if appropriate, the Board might limit the description of expertise more narrowly than put forward).

The expert will generally give opinion evidence and may also give factual evidence. Opinion evidence may be given hypothetically. If this is done, the party calling the witness should set out a hypothetical question stating all of the assumptions necessary for the expert to give the opinion. Then that hypothetical question can be applied to the facts of the case. Opinion evidence may also be given based on the expert's knowledge of the facts of the case. In that event, the expert should describe the factual bases to support his/her conclusions.

(See Appendix C for Qualification of an Expert Witness).

### **7. DECISIONS**

The Chair will assist in the preparation of a written decision, providing reasons for each decision, in accordance with an established decision outline (Appendix D).

Members of the Board should take notes during the hearing process. The Secretary will be available to assist the Board during the decision-making process by providing a summary of the proceedings, if necessary, and to document any additional information as well as the Board's decision. The Secretary will provide administrative/secretarial support.

Decisions on appeals 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 to the Appellant and the Municipal Inspector/Environmental Protection Officer. The decision will be accompanied with information regarding the right of appeal to the court on a question of law or jurisdiction only.

The parties to an appeal should be informed of the Board's decision before anyone else. A courtesy copy may be emailed to the two parties involved, while at the same time carry out the requirements of registered mail service, etc.

## ENVIRONMENTAL MANAGEMENT APPEALS BOARD POLICY AND PROCEDURES

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*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 City's representative. In the case where only one party is consulted, the other party will be advised accordingly. If the Board determines that an amendment needs to be made to the decision, all parties will be advised and the amendment will be made only if there is no disagreement by either party. If there is disagreement regarding a proposed amendment to the decision, the Board will consult with its legal counsel.*

### PROCEDURES FOR CHAIRING A HEARING

This is a meeting of the Environmental Management Appeals Board. The Board consists of members of this community who have been appointed by City Council to serve a neutral position on the Board. The Board will hear the Appellant and the City, with the Appellant having the final comments. The Board will make a determination based on the evidence presented at the hearing and within Section 329 of *The Cities Act*.

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. In the event that the Board chooses to record the proceedings, no one other than Board members or staff will be permitted to access the recording. 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.

In all cases the Board will reserve its decision, meaning that it will deliver its decision at a later date. A verbal decision is usually available the day following the hearing from the Secretary of the Board; however, a detailed written decision will be provided by registered mail at a later date.

My name is << >>, I am the Board Chair. The other Board members are << >>. The Board Secretary is << >> of the City Clerk's Office.

I would ask that the City's representative introduce himself/herself (and anyone else representing the City).

**(To the Appellant)** Would you please state your name for the record of the Board.

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Also, if anyone else is present for this hearing, would you please identify yourself and state your name and interest in the appeal for the record.

I will now review the documents on file which have been identified as follows: <<A.1, being...etc.; R.1 being...etc.; B.1...etc. >>. (Read these from the yellow Submitted Documents sheet).

Does either the Appellant or the City have any objection to any one of these documents being formalized as an Exhibit?

Hearing no objections, the documents will now be formalized as Exhibits.

The Board has established that all persons who give evidence before the Board will be required to affirm that the evidence they give will be the truth.

I will now ask the City's representative(s) to affirm.

***Do you solemnly affirm that the evidence you are about to give at this hearing is the whole truth and nothing but the truth?***

**(To the City's representative)** Please proceed with your statement on this appeal.

**(To the Appellant)** Do you have any questions of the Municipal Inspector at this time?

**(To Board members)** Do members of the Board have any questions they wish to ask the Municipal Inspector at this time?

I will now ask the Appellant to affirm.

***Do you solemnly affirm that the evidence you are about to give in this matter is the whole truth and nothing but the truth?***

**(To the Appellant)** Would you please proceed with your statement with respect to this appeal.

**(To the City)** Does the Municipal Inspector have any questions of the Appellant at this time?

**(To Board members)** Do Board members have any questions of the Appellant at this time?

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**(To the Gallery)** Is there anyone else present who wishes to address this matter? If so, please identify yourself and take the following affirmation:

***Do you solemnly affirm that the evidence you are about to give in this matter is the whole truth and nothing but the truth?***

**(To the Appellant)** Do you have any new additional comments to make or any rebuttal comments, based upon the evidence presented by the Municipal Inspector?

**(To Board members)** Do Board members have any final questions?

This will close the hearing. The Board will review the evidence and make its decision. The Board will render its written decision with reasons and you will receive it by registered mail. The Board's written decision can be appealed to the court on a question of law or jurisdiction only, and you will have 30 days following the date of the decision to appeal further if necessary.



# ENVIRONMENTAL MANAGEMENT INFORMATION SHEET APPEALS BOARD

## INTRODUCTION

The Environmental Management Appeals Board consists of five members appointed by City Council. The Board is to hear and determine the appeal of any person aggrieved by an Order made by a Municipal Inspector/Environmental Protection Officer under *Bylaw No. 9466 - The Sewer Use Bylaw, 2017*; *Bylaw No. 8310 - The Waste Bylaw, 2004*; and/or *Bylaw No. 9772 - The Drainage Bylaw, 2021*.

## HOW DO I APPEAL TO THE BOARD?

A Notice of Appeal form will be included with the Order which is served on you by the Municipal Inspector. Within 15 days after the date of the Order you must file the Notice of Appeal, outlining your reasons for appeal, with the Secretary of the Environmental Management Appeals Board, City Clerk's Office, City Hall.

## WHEN WILL MY APPEAL BE HEARD?

Your appeal will be heard as soon as possible. You will be notified by **registered mail** of the location, date and time. **It is important that you pick up your registered mail.**

## DO I NEED TO ATTEND THE HEARING?

If you do not wish to attend the hearing, you may send someone to represent you. If you do not attend or are not represented, the Board will proceed with the hearing and make its decision based on your written Notice of Appeal and the information provided by the Municipal Inspector.

## WHAT HAPPENS AT A HEARING?

The Board members and parties to the appeal will be introduced. Anyone giving evidence before the Board will be asked to affirm that the evidence being presented is the truth. The Municipal Inspector will be asked to explain the Order to the Board. You will then be given an opportunity to present your case to the Board.

You may wish to bring photographs or other documentation to support your appeal. Board members may have questions of both you and the Municipal Inspector. You will also be given an opportunity to ask any questions you may have.

## IS THERE ANYTHING ELSE I SHOULD KNOW ABOUT?

Notes are taken by the Board Secretary during your hearing and are for the Board's use only.

If you wish to have any part of the hearing recorded or wish to have a transcript of the hearing for your own purposes, you must submit your request in writing to the Board Secretary at least 2 days before the date of the hearing. The Board Secretary will arrange for a certified Court Reporter to attend the hearing and you will be responsible for any recording or transcription fees. Unless there is a formal Order by the Board Chair, no one is allowed to make any recordings of any kind or photograph any portion of the proceedings.

## WHEN WILL THE BOARD MAKE ITS DECISION?

The Board will make its decision after the hearing. You will receive a written decision from the Board by registered mail within approximately 14 days.

## CAN I APPEAL THE DECISION OF THE ENVIRONMENTAL MANAGEMENT APPEALS BOARD?

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 made.

Please contact (306) 975-3240 for additional information.

Note: This is an information sheet only and has no legislative sanction.



Date: \_\_\_\_\_

Appeal No.: \_\_\_\_\_

**ENVIRONMENTAL MANAGEMENT APPEALS BOARD**

**ORDER FOR RECORDING/TRANSCRIPT**

I hereby order that this hearing, or portion of hearing, be recorded by \_\_\_\_\_ of  
Saskatoon, SK, with or without a transcript copy of the recording, and further, that any  
costs associated with the recording, any transcript of the recording, or copies of the  
recording or transcript be charged against the party requesting the recording.

\_\_\_\_\_  
Chair, Environmental Management Appeals Board

## QUALIFICATION OF AN EXPERT WITNESS

In the Policy and Procedures Manual, there is a provision dealing with expert witnesses. Either an Appellant, or the City, may call someone to provide expert testimony. The following will briefly deal with the procedure a Board Chair should use when faced with the prospect of dealing with an expert witness.

1. The witness must be **qualified**. There is a process by which this is done. Once that process has been completed, the Board Chair (in consultation with his/her members) will have to decide if the witness has sufficient expertise to testify as proposed.
2. The witness does not give any expert testimony unless and until he/she is qualified by the Chair to do so. Whoever is calling that witness goes first. Usually, the witness will have a typewritten résumé or curriculum vitae to give to the Board. If so, it should be recorded as an Exhibit in the appeal hearing, irrespective of whether the witness is ultimately qualified. The Chair should ask for a copy of the résumé at the beginning of the hearing.
3. The Board Chair should ask the other party if the qualifications of the proposed expert are in dispute, or agreed. If agreed, much time will be saved. Next, the party calling the proposed expert asks the expert questions. The witness is put under oath at this time. The witness should confirm (under oath) that all of the information contained in the résumé is true. Then, the party calling the witness asks questions exploring the qualifications of that witness.
4. Frequently asked qualification questions will often include:

**A. Name, Address, Background**

**B. Business or Occupation**

- Description of business or occupation.
- How long in that business, and in what capacity.
- Duties in that capacity.
- Other relevant positions held, description of duties.

**C. Education**

- Undergraduate degree/certificate obtained, where and when?
- Postgraduate degree/certificate obtained, where and when?
- Any Masters or Ph.D. thesis written?

**D. Training**

- What courses have been taken that relate to their “expert” opinion?
- Whom has the witness trained under?
- When and for how long?

**E. Licenses**

- Is a license required (i.e. Appraisal Institute of Canada)?
- When was the license first obtained? Held on a continuous basis?
- Is any upgrading or recertification required?

**F. Professional Associations**

- Memberships held?
- Any executive positions held?
- Other related information.
- Teaching positions? Articles or books published? Lectures delivered?
- Consulting work?

**G. Court/Tribunal experience**

- Has this witness ever been qualified to give expert testimony in another forum? If so, when and where, and who qualified him/her?
- How frequently has this witness testified?
- Has this witness testified for both sides or only one?
- Is the witness being paid for his testimony today? By whom, and how much?

**H. Experience in Area of Specialty**

- Types of things the witness usually does? How often?
- Methodology used?
- Is the area of expertise previously recognized in law?
- Frequency of use of skill: (i.e. how many appraisals done in the last 12 months? Career)?

5. Once the first side is done, then the opposite party has the right to cross-examine on qualifications. At the end, the Chair can ask clarification questions.
6. At this point the party trying to use the expert should advise the Board as to precisely **what** the expert is qualified in. In other words, on what subjects can this witness offer expert opinion testimony? There is often debate about this.
7. It is the **Chair** that must decide both if the proposed expert is qualified, and in what area. The Chair must rule on this point and advise both sides of the ruling, so both sides know how to proceed. This should be done immediately, but if in doubt, adjourn for 10 minutes and contact legal counsel.
8. At some point, the other side should be asked if they want time (an adjournment) to consider their position. They may have been caught by surprise by the expert witness. You must carefully balance each party's rights.

9. Each case is different. An expert should be readily familiar with the matter for which his/her opinion is being sought.
10. Once all this is done, the appeal proceeds as with any other witness. In other words, the party calling him/her asks questions; the other side cross-examines; the original party rebuts.
11. This is a rough procedural guideline only. It is not exhaustive.

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## RECORD OF DECISION

### ENVIRONMENTAL MANAGEMENT APPEALS BOARD

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**APPEAL NO.:** -20

**RESPONDENT:** City of Saskatoon

In the matter of an appeal to the Environmental Management Appeals Board by:

respecting the **Order to Remedy Contravention** dated , **20** , for the property at:

**Property Address:**

**Legal Description:** Lot No. , Block No. ,  
Plan No.

**BEFORE**

Mr. Michael Brockbank, Chair  
Mr. Ian Oliver, Vice-Chair  
Mr. Roy Fleming, Member  
Mr. Donald Stiller, Member  
Mr. Dan Wiks, Member

**Appeared for  
the Appellant**

**Appeared for  
the Respondent**

, Environmental Protection Officer,  
Utilities and Environment Division  
, Environmental Protection Manager,  
Utilities and Environment Division

The appeal was heard in Committee Room B, 2<sup>nd</sup> Floor, North Wing, City Hall,  
Saskatoon, Saskatchewan, on Wednesday, , 20 .

**PRELIMINARY ISSUES:****GROUNDINGS AND ISSUES:**

The Appellant, \_\_\_\_\_, launched an appeal under *Bylaw No. 9466 - The Sewer Use Bylaw, 2017*; *Bylaw No. 8310 - The Waste Bylaw, 2014* and/or *Bylaw No. 9772 - The Drainage Bylaw, 2021* and Section 329 of *The Cities Act*, in connection with an Order to Remedy Contravention \_\_\_\_\_ for the property at \_\_\_\_\_. The Order to Remedy outlined the following:

“ \_\_\_\_\_ ”

As set out in the Notice of Appeal to the Environmental Management Appeals Board (Exhibit A.1), the Appellant outlined the reasons for appealing, as follows:

“ \_\_\_\_\_ ”

**EXHIBITS:**

Exhibit A.1: Notice of Appeal from \_\_\_\_\_ to the Environmental Management Appeals Board, received in City Clerk's Office on \_\_\_\_\_, 20\_\_\_\_\_.

Exhibit A.2: \_\_\_\_\_.

Exhibit B.1: Notice of Hearing dated \_\_\_\_\_, 20\_\_\_\_\_.

Exhibit R.1: Order to Remedy Contravention \_\_\_\_\_ dated \_\_\_\_\_, 20\_\_\_\_\_, for the property at \_\_\_\_\_, received in City Clerk's Office on \_\_\_\_\_, 20\_\_\_\_\_.

Exhibit R.2: Site photographs submitted by the Environmental Protection Officer, dated \_\_\_\_\_, 20\_\_\_\_\_, received in the City Clerk's Office on \_\_\_\_\_, 20\_\_\_\_\_.

Exhibit R.3: Site photographs submitted by the Environmental Protection Officer at the hearing, dated \_\_\_\_\_, 20\_\_\_\_\_.

**EVIDENCE AND ARGUMENT OF THE APPELLANT:**

The Appellant, \_\_\_\_\_, was in attendance at the hearing. The following is a summary of evidence and argument.

**EVIDENCE AND ARGUMENT OF THE RESPONDENT:**

The City of Saskatoon, being the Respondent, was represented by \_\_\_\_\_, Environmental Protection Officer, Utilities and Environment Division. The following is a summary of \_\_\_\_\_ evidence and argument.

### **ISSUES:**

- 1) **Were the requirements of the Order to Remedy Contravention issued by the Municipal Inspector appropriate?**
- 2) **Was the time allowed to comply with the requirements of the Order to Remedy Contravention appropriate?**

### **BYLAWS AND STATUTES:**

In the general course of its deliberations, the Board was guided by principles expressed in *Bylaw No. 9466 - The Sewer Use Bylaw, 2017*; *Bylaw No. 8310 - The Waste Bylaw, 2014* and *Bylaw No. 9772 - The Drainage Bylaw, 2021* and any amendments thereto, in its entirety, and Section 329 of *The Cities Act*.

As provided for in Section 329(1) of *The Cities Act*:

- 329(1) *A person may appeal an order made pursuant to section 328 within 15 days after the date of the order:*
- (a) *to a local appeal board, if one is established or designated by the city; or*
  - (b) *to the council, where no local appeal board is established or designated by the city.*

As provided for in Section 329(3) of *The Cities Act*:

- 329(3) *On an appeal pursuant to subsection (1), the local appeal board or the council, as the case may be, may:*
- (a) *confirm, modify or repeal the order appealed from; or*
  - (b) *substitute its own order or decision for the order being appealed from.*

The particular sections of *Bylaw No. 9466 - The Sewer Use Bylaw, 2017*; *Bylaw No. 8310 - The Waste Bylaw, 2014* and *Bylaw No. 9772 - The Drainage Bylaw, 2021* being dealt with in the Order to Remedy Contravention \_\_\_\_\_ are:

“ ”

### **APPLICATION/ANALYSIS:**

Having heard the representations, the Board determined that \_\_\_\_\_.

**DECISION:** THAT the requirements of the Order to Remedy Contravention ,  
dated , 20 , with respect to the property at be  
.

TAKE NOTICE that a decision of this Board may be appealed to the court on a question of law or jurisdiction only within 30 days after the date the decision is made.

Contact: Local Registrar  
Court of Queen's Bench  
520 Spadina Crescent East  
Saskatoon SK S7K 3G7



DATED AT SASKATOON, SASKATCHEWAN, THIS            DAY OF  
20            .

**CITY OF SASKATOON ENVIRONMENTAL MANAGEMENT APPEALS BOARD**

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**Mr. Michael Brockbank, Chair**

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**Ms. Debby Sackmann, Secretary**