

	<h1>POLICY</h1>	<u>Policy No:</u> Click here to enter text.
<u>Policy Title:</u> <b>PROPERTY STANDARDS APPEAL COMMITTEE – TERMS OF REFERENCE</b>  <u>Policy Type:</u> COUNCIL  <u>Category:</u> Governance  <u>Sub-Category:</u> Board & Committee  <u>Author:</u> M. Blake  <u>Dept/Div:</u> Corporate Services/Legislative Services/Council/Committee Services	<u>Approval Date:</u> Click here to enter a date.	<u>Reviewed Date:</u> Click here to enter text.
		<u>Next Review Date:</u> Click here to enter text.  <u>Reviewed Date:</u> Click here to enter text.
	<u>Amended:</u> Click here to enter a date.	
	<u>Replaces:</u> Click here to enter text.	<u>Repealed:</u> Click here to enter a date.
	<u>Replaced by:</u> Click here to enter text.	
<u>Related Policies, Procedures and/or Guidelines:</u> Appointments to Boards & Committees Policy - GOV-BOA-063 Municipal Act Municipal Conflict of Interest Act OBC SPPA		

**1. POLICY PURPOSE:**

The purpose of the Policy is to establish the Terms of Reference for the Property Standards Committee. The Property Standards Committee hears appeals of orders issued by City Property Standards Officers for violations of certain [Ontario Building Code](#) and [municipal by-law standards](#) for residential, multi-residential and commercial properties.

**2. DEFINITIONS:**

**Agent:** An individual authorized prior to the hearing, by signature of the property owner/occupant to address the Kitchener Property Standards Appeal Committee on behalf of the subject property.

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**Appellant:** A property owner that has been served with an Order to Comply and who has submitted a Notice of Appeal to the Committee Secretary within the fourteen (14) days of being served with the Order.

**By-Law Enforcement Officer:** By-law Enforcement Officers are City Staff responsible for the property standards enforcement process, such as requirements to issue a Property Standards Order, service of the Order, and ensuring the Order has been complied with. Responding By-law Enforcement Officers attend Committee meetings as the Respondent to provide evidence.

**Chair:** The Chair moves forward business outlined on the meeting agenda, ensures decorum is maintained at meetings, and the rules of procedure and conduct are observed.

**Secretary Treasurer:** The Secretary Treasurer is a staff member appointed by the Committee and is a non-voting member. They provide administrative support to the Committee, and procedural advice within hearings.

**Vice Chair:** The Vice Chair acts in the absence of the Chair and assumes the roles and responsibilities of the Chair.

**Quorum:** The minimum number of Committee members that must be in attendance to conduct hearings.

3. **SCOPE:**

POLICY APPLIES TO THE FOLLOWING:	
<input checked="" type="checkbox"/> All Employees	
<input type="checkbox"/> Management	<input type="checkbox"/> Permanent Full-Time Employees
<input type="checkbox"/> Permanent Full-Time Non Union	<input type="checkbox"/> Permanent Full-Time C.U.P.E. 791
<input type="checkbox"/> Temporary	<input type="checkbox"/> Part-Time Non-Union
<input checked="" type="checkbox"/> Student	<input type="checkbox"/> Permanent Full-Time Union
<input type="checkbox"/> Continuous Part-Time Employees	<input type="checkbox"/> Part-Time Employees
<input type="checkbox"/> Continuous Part-Time Non-Union	<input type="checkbox"/> Continuous Part-Time Union
<input type="checkbox"/> Specified Positions only:	<input type="checkbox"/> Other:
<input type="checkbox"/> Council	<input checked="" type="checkbox"/> Local Boards & Advisory Committees

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#### **4. POLICY CONTENT:**

##### **4.1. Purpose of the Committee**

The Property Standards Appeal Committee hears the appeal of any owner or occupant who has been served with an Order issued under the Kitchener Municipal Code Chapter 665 (Standards of Maintenance and Occupancy of Property) and who is not satisfied with the terms or conditions of the Order.

##### **4.2. Roles and Responsibilities**

The Committee's powers with respect to rendering a decision are contained in section 15.3(3) of the Building Code Act and Municipal Code Chapter 665.

The Property Standards Appeal Committee may:

- Confirm (uphold) the Order as it currently stands,
- Rescind the Order,
- Modify the Order (some items may have been completed while others remain outstanding); or,
- Grant an extension of time to comply with the Order. (In contemplating this decision, the Committee must be of the opinion that the general intent of the Municipal Code Chapter 665 is being maintained).

##### **4.3. Governance**

The Property Standards Appeal Committee shall adhere to the City policies and procedures, the Statutory Powers Procedure Act, Municipal Conflict of Interest Act, Kitchener Municipal Code Chapter 665, the Municipal Freedom of Information and Protection Act, and the Building Code Act sections 15, 16 & 18.

The Committee shall use the guidance of Chapter 25 (Procedure) of the City of Kitchener Municipal Code to ensure a fair and unbiased hearing.

#### **5. GENERAL:**

##### **5.1. Committee Composition**

The Property Standards Appeal Committee shall be comprised of a minimum of three (3) members, as per Section 15.6 of the Building Code Act. A Chair and Vice Chair will be elected from the Committee on an annual basis for the following year.

##### **5.2. Member Qualifications**

Consideration to the following criteria will be given for appointments to the Property Standards Committee:

- Will comply with the criteria outlined in Council Policy GOV-BOA-063 (Appointment to Boards & Committees);

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- Demonstrated interest, academic qualification, work experience, knowledge or professional expertise.
- Availability to attend meetings shall also be considered;
- Knowledge and/or understanding of the Building Code Act would be considered an asset;
- Ensuring a balance between experience and new membership;
- Knowledge in one or more areas: legal tribunal governance, land use, real estate, law, construction, development, municipal policy.
- Demonstrated decision-making, communication, and mediation skills to facilitate an open and fair hearing process.

### **5.3. Term of Appointment**

The Committee shall serve for a two-year term or, another term determined by the Council that appointed them and, they shall remain members of the Committee until their successors are appointed. Where a member ceases to be a member before the expiration of their term, Council will appoint another person for the unexpired term.

### **5.4. Renumeration**

Committee members shall be compensated \$75 for each meeting they attend. Honorariums will be paid following participation in each Property Standards Appeal Committee meeting and will not be subject to income tax deductions by the City.

### **5.5. Code of Conduct**

The Property Standards Appeal Committee members shall comply with any applicable legislation and regulations under the Statutory Powers of Procedure Act and shall abide by the Code of Conduct adopted by Council.

### **5.6. Conflict of Interest**

The Municipal Conflict of Interest Act sets out a primary set of ethical rules for Council, Committee and local board members. These rules apply if members have a pecuniary (financial) interest in a matter that is before them at a meeting. The legislation requires a member with a pecuniary interest to:

- disclose the interest and its general nature before the matter is considered at the meeting;
- complete any required form (s) to necessary by the municipal conflict of interest act;
- not take part in the discussion or voting on any question in respect of the matter;
- not attempt to influence the voting, during or after the meeting; and
- immediately leave the meeting, if the meeting is closed to the public.

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Regarding procedural fairness, members of the Property Standards Appeal Committee should consider taking the above-noted steps where they believe they have an actual bias or where a reasonable apprehension of bias may exist which could impact their ability to decide fairly on a particular matter before them at a meeting.

In determining whether there is a reasonable apprehension of bias, the member should consider whether a reasonable and informed person, with knowledge of all relevant circumstances, viewing the matter realistically and practically, would think that it is more likely than not that the member, whether consciously or not, would not decide the matter fairly.

#### **5.7. Resources to the Committee**

The Secretary-Treasurer is a City of Kitchener staff member appointed by the Committee and is a non-voting member. They provide administrative support to the Committee and, procedural advice within hearings. In the absence of the Secretary Treasurer, an Acting Secretary Treasurer appointed by the Committee will act in their place.

The Secretary Treasurer will provide or arrange for the provision of orientation and training to Committee members following their appointments relating to the role of the Property Standards Appeal Committee, the Kitchener Municipal Code Chapter 665, and the Building Code Act sections 15, 16 & 18, and related policies and procedures. The Secretary Treasurer will arrange for additional training and educational sessions for the Committee or individual members as required or requested by the Committee or a member of the Committee.

The City of Kitchener Legal Staff are available to provide subject matter information related to the Kitchener Municipal Code Chapter 665 and the Building Code Act sections 15, 16 & 18 upon request, should the Committee choose to recess, deliberate and consult a lawyer.

### **6. Hearings**

#### **6.1. Conduct of Hearings**

The Property Standards Committee shall adhere to City policies and procedures, the Statutory Powers Procedure Act, Municipal Conflict of Interest Act, certain Ontario Building Code and municipal bylaw standards and use the guidance of the Procedural By-law to ensure a fair and unbiased hearing. Where the above noted laws and policies do not speak to an issue, Robert's Rules of Order will be the default guide for meeting procedures.

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The Property Standards Committee shall provide and conduct fair hearings by:

- Allowing both the Appellant and Respondents and their witnesses as necessary, speak to an appeal;
- Giving due diligence to the consideration of each appeal;
- Reviewing the merits of the appeal, the documentation and evidence put forward and, rendering decisions on applications, in accordance with the requirements of the municipal by-law standards.
- Making rational decisions with appropriate, well-thought-out conditions; and,
  - Each member including the Chair clearly identifying support or opposition when voting; and,
  - Clearly stating the reasons for their decisions.

## **6.2. Meeting Schedule and Location**

The Property Standards Committee shall meet once a month in the Council Chamber unless otherwise advertised, pending receipt of an appeal to an Order to Comply. The Secretary shall prepare a schedule of hearings on an annual basis which will be advertised on the City's website. Generally, the meetings are held on the last Wednesday of the month. The date, time, and location of meetings can be modified at the discretion of the Secretary to the Committee and the Director of Enforcement or designate. Notice of any modified meeting details shall be published on the City's website.

## **6.3. Notice of Hearing**

Upon receipt of the 'Order to Comply', the property owner must file an appeal using the prescribed Property Standards Notice of Appeal form to Legislated Services within fourteen (14) working days from the date they receive the Order to Comply from the Enforcement Officer. The responding Enforcement Officer and the Director of Enforcement shall be informed of this appeal via email by the Secretary Treasurer.

The Secretary Treasurer shall endeavour to schedule a Property Standards Appeal Committee hearing within 45 working days of the Clerk's receipt of the request for an appeal hearing or as soon thereafter as possible.

Notice of the Hearing shall be issued a minimum of 14 days prior to the hearing. Notice can be issued less than 14 days prior to the hearing at the discretion of the property owner, Secretary-Treasurer and Director of Enforcement.

## **6.4. Open Meetings**

All Property Standards Appeal Committee meetings shall be open to the public in accordance with the City of Kitchener's Procedural By-law and the Municipal Act. After all submissions have been made, the Committee may retire to another

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room to deliberate before rendering its decision as outlined under the Statutory Powers of Procedure Act.

#### **6.5. Quorum**

Quorum for the Property Standards Appeal Committee is the minimum number of Committee members that must be in attendance to conduct hearings. At the time of this policy, two members shall constitute a quorum. All members are requested to attend every meeting, according to the schedule. Members of Committee shall notify the Secretary-Treasurer when they will be absent from any meeting.

#### **6.6. Voting**

Every Property Standards Appeal Committee member is required to vote, including the Chair. Those members who are present at a Committee Meeting when a decision is rendered shall vote by show of hands, except where they are disqualified from voting by reason of a pecuniary interest or is absent from the meeting during the vote. Any member who refuses to vote will be recorded as voting in the negative (opposed). In the event of equality of votes, the motion being voted on is deemed to be lost.

#### **6.7. Hearing Procedures**

Where possible, the hearing procedure should abide by the following:

- The Chair shall call the meeting to order;
- Adoption of Minutes Previous Hearing;
- Committee Members shall declare any pecuniary interests that they may have in applications before the Committee, and the provisions of the Municipal Conflict Interest Act shall apply.
  - If a conflict of interest is declared, it is suggested that the member leave the meeting room for the duration of the hearing of the application and until a decision is rendered.
- Chair welcomes those in attendance and provides an explanation of the procedures:
  - The City of Kitchener Enforcement Staff and their representatives shall be given the opportunity to present their evidence;
  - The Appellant and their representatives shall be given the opportunity to present their evidence;
  - Comments and questions are to be addressed through the Chair;
  - All those in attendance at the meeting shall be encouraged not to:
    - speak disrespectfully of any person;
    - use offensive words;
    - disobey the decision of the Chair or Committee; and,
    - enter into cross debate with other persons present, City staff, Members, or the Chair.

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- The City of Kitchener Enforcement Staff, Appellant and their representatives shall be given the opportunity to present their evidence.
- Members of the Committee may retire, if necessary, to deliberate on the matter before them prior to rendering a decision;
- Members will render the decision verbally in the meeting;
  - In the event the Committee needs more time to consider its decision, the Committee can reserve their decision, whereby the decision would be communicated to staff and the appellant in writing through the issuance of a Notice of Decision. However, if possible, it is preferable for the Committee to render its decision on the date of the hearing while the parties are present.
- Adjournment of the meeting.

Staff reserve the right to amend hearing procedures as they are administrative in nature and are required to reflect legislative changes. Please see appendix 'A', Administrative Hearing Procedures for comprehensive hearing procedures for the Property Standards Appeal Committee.

#### **6.8. Notice of Decision**

The Secretary Treasurer will endeavor to notify the Appellant, in writing of the Committee's decision within five (5) working days. City of Kitchener Enforcement Staff shall also receive a copy of the decision.

The decision of the Committee can be appealed by the City or the Appellant to the Superior Court of Justice within 14 days of the decision being issued. Such an appeal would be heard by a Judge who has the same powers as the Committee in rendering a decision.

#### **7. HISTORY OF POLICY CHANGES**

None at this time.



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## Appendix A

### Property Standards Appeal Committee Administrative Hearing Procedures

Where possible, the Property Standards Appeal Committee hearing procedures will abide by this document. Staff reserve the right to amend hearing procedures as they are administrative in nature and are required to reflect legislative changes.

#### **START OF THE MEETING**

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The **Chair shall** advise:

*“This meeting of the Property Standards Committee is being called to consider appeals of ‘Orders to Comply’ issued by the City of Kitchener’s Enforcement staff pursuant to Chapter 665 of the City of Kitchener Municipal Code, the Building Code Act and the Statutory Powers Procedure Act.”*

The **Chair shall** introduce themselves, Committee members and the Committee Administrator.

The **Chair shall** advise Committee Members to declare any pecuniary interests that they may have in applications before the Committee, and the provisions of the Municipal Conflict Interest Act shall apply.

- If a conflict of interest is declared, the member shall leave the meeting room for the duration of the hearing of the application and until a decision is rendered.
- In determining whether there is a reasonable apprehension of bias, the Committee member should consider whether a reasonable and informed person, with knowledge of all relevant circumstances, viewing the matter realistically and practically, would think that it is more likely than not that the member, whether consciously or not, would not decide the matter fairly.
- Where members of the Committee believe they have an actual bias or a reasonable apprehension of bias which could impact their ability to decide fairly on a particular matter before them at a meeting, members should consider taking the steps outlined under “Conflict of Interest.”

#### **THE APPEAL(S) THAT WILL BE HEARD / INTRODUCTIONS:**

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1. Appeal #2023-01
  - Street address
  - Officer name
  - Reason
2. Appeal #2023-02
  - Street address
  - Officer name
  - Reason

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## **THE HEARING PROCESS**

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The **Chair shall** read the following statement and **review** the hearing process:

*“The hearing is a formal process where those giving evidence will be required to make an affirmation as to the validity of their testimony; however, the Committee tries to conduct the hearing in a relaxed fashion.”*

## **COMMITTEE’S POWERS & ABILITY TO RENDER A DECISION**

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The **Chair shall** advise that the Committee has the **authority** to do 1 of 4 things:

1. Confirm (uphold) the Order as it currently stands;
2. Rescind the Order;
3. Modify the Order (e.g. some items may have been completed while others remain outstanding); or,
4. Grant an extension of time to comply with the Order.

The Appellant **will receive** the Committee’s ***decision in writing*** from the Committee Administrator.

### **PROCESS FOR HANDLING EACH WITNESS:**

- i) The Director/Supervisor of By-law Enforcement will introduce the matter;
- ii) The Committee Administrator will affirm the witnesses who will then give testimony;
- iii) The appellant can ask questions regarding the statements made;
  - **Note that this is a time to ask questions only**
- iv) The **Committee members** may **ask questions** of the City staff;
- v) The **Appellant** is then affirmed and gives testimony;
- vi) City staff can then ask questions regarding the testimony;
- vii) The Committee members then may ask questions of the appellant;
- viii) Both sides provide a summation;
  - ix) The parties to the hearing are asked to wait outside the room while the Committee deliberates or, the Committee may retire to a different room; and,
  - x) The Committee may give its decision today, or it will be provided in writing once they have finished deliberating.