

 <b>M O N C T O N</b>	<b>POLICY</b>	<b>Owner Department:</b> Legal
	<b>Appeal Committee of Council of the City of Moncton on Dangerous or Unsightly Premises and Property</b>	
<b>Effective Date:</b> July 15, 2019	<b>Last Reviewed Date:</b> July 15, 2019	
<b>Approving Authority:</b> Moncton City Council	<b>Replaces No.:</b> N/A	

### 1. Purpose Statement

Section 134 of the Local Governance Act and the By-Law Z-819, prescribes that a person who has been served with a Notice, under the Act and By-Law Z-819, may appeal to the appropriate committee of council.

### 2. Application

To all residents of the City who are served with Notices, under By-Law Z-819.

### 3. Definitions

Wherever a word is used in these Provisions with its first letter capitalized, the term is being used as it is defined in this Section. Where any word appears in ordinary case, its regularly applied meaning in the English language is intended.

**“Appeal Committee”** means the Appeal Committee of Council of the City of Moncton on Dangerous or Unsightly Premises and Property.

**“Architect”** means a professional architect registered in the Province of New Brunswick.

**“Business Day”** means a day other than a Saturday, Sunday or statutory holiday in the Province of New Brunswick.

**“Business Hours”** means 8:30 a.m. to 4:30 p.m. of any Business Day.

**“By-Law Z-819”** means By-Law # Z-819 a By-Law relating to Dangerous or Unsightly Premises and Property in the City of Moncton.

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**“By-Law Enforcement Officer”** means a by-law enforcement officer appointed under Section 72 of the Appeal Committee of Council of the City of Moncton on Dangerous or Unsightly Premises and Property Policy No.: POL-LEG-LG-010 Page 2 of 7 Local Governance Act and designated by City Council.

**“Chairperson”** means the Chairperson of the Appeal Committee.

**“City Clerk”** means the City Clerk of the City of Moncton or the Assistant City Clerk.

**“City Council”** means the elected municipal council of the City of Moncton.

**“Engineer”** means a professional engineer or a consulting engineering firm who is currently licensed to practice within the Province of New Brunswick to carry out engineering services.

**“Notice”** means a Notice to Comply prescribed by New Brunswick Regulation 2018-52 under the Local Governance Act, issued in conformity with the Local Governance Act and with By-Law Z-819.

**“Official Languages”** means the two official languages of New Brunswick within the meaning of the Official Languages Act, S.N.B. 2002, c. 0-0.5, and amendments thereto.

**“Property”** means the property for which a notice of appeal has been sent to and received by the City Clerk pursuant to the Local Governance Act and By-Law Z-819.

**“Vice-Chairperson”** means a Vice-Chairperson of the Appeal Committee.

## 4. Policy

### Interpretation

1. **Headings:** The captions, articles, section names and numbers appearing in these provisions are for convenience of reference only and have no effect on its interpretation.
2. **Gender, Number:** These provisions are to be read with all changes of gender or number required by the context.
3. **Severability:** If any section or clause of these provisions, is for any reason declared by a court or tribunal of competent jurisdiction to be invalid, the ruling shall not affect the validity of the provisions as a whole, nor any other part of it.

### Composition of the Appeal Committee and Vacancies

4. There shall be an Appeal Committee composed of four (4) members.
5. All Appeal Committee members shall be:
  - (a) members in good standing of the Law Society of New Brunswick;
  - (b) have been in active legal practice for at least five (5) years; and
  - (c) practicing law within the city limits of the City of Moncton.

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6. The Appeal Committee shall select one (1) Chairperson and one (1) Vice-Chairperson from amongst its members.
7. At least two (2) Appeal Committee members shall be fluent in both Official Languages.
8. The Mayor shall appoint all members who serve on the Appeal Committee.
9. Should a member of the Appeal Committee die, resign, become ineligible to be a member or be removed from office, the Mayor shall, as soon as reasonably possible, appoint another person to replace such member, and such newly appointed member shall hold office for the remainder of the term of the member he replaces.

### **Terms of Office**

10. Each member of the Appeal Committee shall be appointed for a term of two (2) years.

### **Duties of Chairperson /Vice-Chairperson**

11. The Chairperson shall determine the time, date and place of hearings of the Appeal Committee.
12. A Vice-Chairperson is authorized to act as Chairperson in the event of the Chairperson's absence or his inability to act or in case of a vacancy, and when so authorized, the Vice-Chairperson shall have all the powers and duties of the Chairperson.
13. All references in this Policy referring to Chairperson shall include Vice-Chairperson when a Vice-Chairperson is authorized to act as the Chairperson.

### **Revocation of Appointment or Resignation**

14. Any appointment to the Appeal Committee may be revoked by the Mayor at any time.
15. A member may resign at any time by submitting his resignation in writing to the Mayor.

### **Rules of Procedure**

16. Upon receipt of a notice of appeal that has been issued in accordance with subsection 6(1) of By-Law Z-819, the City Clerk shall:
  - (a) Obtain from the By-Law Enforcement Services a copy of the Notice to which the notice of appeal relates;
  - (b) Promptly notify the Chairperson of the Appeal Committee;
  - (c) Forward a copy of the notice of appeal and all documents submitted by the Appellant, including the Notice, to the Chairperson of the Appeal Committee;
  - (d) Forward a copy of the notice of appeal and all documents submitted by the Appellant to a By-Law Enforcement Officer; and

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(e) Confirm the Appellant's Official Language of choice and, if required, arrange for simultaneous interpretation to be available at the hearing of the matter.

17. After being provided with a notice of appeal, the Appeal Committee shall schedule a hearing date, to take place during Business Hours, and as soon as possible thereafter advise the City Clerk of the date set for the hearing.

18. The City Clerk shall, at least ten (10) business days before a scheduled hearing:

- (a) Advise the By-Law Enforcement Officer of the date, time and place of the hearing; and
- (b) Notify the Appellant of the date, time and place of the hearing by causing the original or copy thereof of a notice of hearing to be given:
  - (i) if the Appellant is an individual, by personal service on the individual;
  - (ii) if the Appellant is a corporation, by personal service on an officer, director or agent of the corporation or on a manager or person who appears to be in control of any office or other place of business where the corporation carries on business in New Brunswick; or
  - (iii) if the Appellant is represented by counsel and his counsel is authorized to accept service, by service on his counsel.

19. During the hearing of the matter, and prior to hearing the submissions and the evidence of the parties, the member of the Appeal Committee hearing the matter shall ask the Appellant:

- (a) To review the Notice received from the City Clerk; and
- (b) Confirm that the Notice received from the City Clerk is the Notice that the Appellant is appealing.

20. The following order shall be followed by the Appeal Committee when hearing any submissions and evidence:

- (a) Firstly, hear the submissions and evidence presented by the Appellant in support of his notice of appeal;
- (b) Secondly, hear the representations and evidence from a By-Law Enforcement Officer in support of the Notice; and
- (c) Offer the Appellant a chance to rebut the representations of and evidence from the By-Law Enforcement Officer.

21. Should the Appellant wish to abandon his appeal, he shall notify the City Clerk in writing on or

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before the date of the hearing.

22. An appeal is deemed to have been abandoned when the Appellant or his counsel do not appear at the time, place and date set out in the notice of hearing.

23. Where an appeal is deemed to be abandoned, the Notice shall be deemed to be confirmed and shall be final and binding on the Appellant who shall comply within the time and in the manner specified in the Notice.

### **Duties and Powers**

24. An appeal shall be heard by one (1) member of the Appeal Committee, selected by the Chairperson, who shall have all the powers and duties of the Chairperson in regards to said appeal.

25. The Appeal Committee shall, when making its decision in an appeal involving an allegedly **dangerous building or structure**, give due consideration to the following:

(a) Section 10 of By-Law Z-819, which provides that a report from an architect, an engineer, a building inspector or the fire marshal that a building or structure is dilapidated or structurally unsound is proof in the absence of evidence to the contrary that a building or structure is dilapidated or structurally unsound;

(b) Other submissions and evidence presented in support of the Notice that is being appealed; and

(c) Other submissions and evidence presented by the Appellant or his counsel.

26. The Appeal Committee shall, when making its decision in an appeal involving allegedly **unsightly premises**, give due consideration to the following:

(a) Whether the items involved are enumerated in subsection 3(1) of By-Law Z-819;

(b) Any submissions and evidence presented in support of the Notice that is being appealed; and

(c) Any submissions and evidence presented by the Appellant or his counsel.

### **Hearings to be Public**

27. All hearings before the Appeal Committee shall be open to the public.

### **Records of the Proceedings**

28. An audio recording of the hearing shall be made and kept by the City clerk.

29. The audio recording of a hearing may be destroyed one (1) calendar year after the hearing of the appeal if the Appellant has not exercised his right under the Local Governance Act to appeal the Appeal Committee's decision to The Court of Queen's Bench of New Brunswick.

**Decisions**

30. The Appeal Committee shall provide a copy of its decision to the Appellant within fourteen (14) days after making its decision. The decision may confirm, modify or rescind the Notice or extend the time for complying with the Notice.

31. The Appeal Committee's decision shall be dated and such date shall be the date of the decision.

32. All decisions of the Appeal Committee shall be written by the Appeal Committee member hearing the matter.

**Conflict of Interest**

33. Any member having a conflict of interest shall refrain from taking part in an appeal.

**Remuneration and Expenses**

34. Members of the Appeal Committee will be remunerated at \$600.00 per hearing day.

35. Members of the Appeal Committee will be reimbursed for necessary expenses, reasonably and actually incurred by virtue of their participation in an Appeal Committee hearing.

**Services or Resources**

36. The City of Moncton shall provide the following to the Appeal Committee:

(a) A venue where the hearings shall take place;

(b) Audio recording equipment which is sufficient to record the hearing;

(c) Secretarial services, as required;

(d) Stationery, as required; and

(e) Such other incidental services or resources which are necessary for the proper functioning of the Appeal Committee.

**Office of the Appeal Committee**

37. The address of the Appeal Committee shall be as follows:

Appeal Committee of Council of the City of Moncton  
on Dangerous or Unsightly Premises and Property  
c/o The City of Moncton  
City Clerk  
655 Main Street, 5th Floor  
Moncton, NB E1C 1E8

**Matters Not Provided For**

38. Any matter of procedure or practice not expressly provided for in this policy shall be left to the members of the Appeal Committee to decide.

**16. Administration and Contact**

**City Hall**

**655 Main St., Moncton, NB E1C 1E8**

**Telephone: 506.853.3550**

**Email: [info.clerk@moncton.ca](mailto:info.clerk@moncton.ca)**