



City of Toronto

Appellate Authority for the Small Business Tax Subclass

RULES OF PROCEDURE

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1. DEFINITIONS

1.1 In these Rules of Procedure ("Rules"), unless the context requires otherwise:

"appeal" is as defined in s. 23.0.12 of Ontario Regulation 282/98 and means an appeal with respect to whether land is included in the small business subclass as defined in that section;

"appellant" means a person entitled to appeal whether land is included in the small business subclass in accordance with s. 23.0.12 of Ontario Regulation 282/98;

"Appeal Documents" means the documents a Party intends to rely on to establish or refute, as the case may be, that an Eligible Property qualifies for inclusion in the small business subclass that are served and filed in accordance with a Notice of Hearing;

"Appellate Authority" means the Controller who is appointed by the City of Toronto to hear appeals under s. 23.0.12 of Ontario Regulation 282/98 and Code Chapter 767 Article 12;

"Authority Administrator" means the staff in the Controller's office providing administrative assistance to the Appellate Authority.

"Code" means City of Toronto's Municipal Code, as amended;

"document" includes any handwritten or typed document or record, file, photograph, map, and any other electronic information that can be shared;

"Eligible Property" means ELIGIBLE PROPERTY as defined in Code Chapter 767 Article 12.

"electronic hearing" is an oral hearing conducted in person by video, or an oral

hearing conducted through such other electronic technology as permits all participants to the proceeding and the Appellate Authority to simultaneously hear one another;

"file" means conclusive delivery to the Appellate Authority of a document;

"hearing" is any step in a proceeding presided over by the Appellate Authority, which may be conducted in writing or electronically as the Appellate Authority determines to be appropriate;

"motion" means a request for an order or decision of the Appellate Authority made at any stage in a proceeding;

"moving party" means a person who makes a motion to the Appellate Authority;

"Notice of Hearing" means a notice of any step in the proceeding including a written or electronic hearing;

"party" means an appellant and all persons whose assessment is the subject of the appeal, the Program Administrator, and any person whom the Authority determines shall have status as a party;

"Program Administrator" means the Director of Revenue Services appointed by the City of Toronto under s. 23.0.07 of Ontario Regulation 282/98 and Code Chapter 767 Article 12;

"proceeding" means a proceeding to which these Rules apply;

"Revenue Services" means the Revenue Services Division of the City of Toronto;

"serve" means conclusive delivery to a party of a document as required in these Rules.

2. INTERPRETATION

- 2.1 These Rules shall receive such fair and liberal interpretation as will best ensure the most expeditious, just, and least expensive determination of every proceeding on its merits.

3. RULES APPLY TO ALL HEARINGS

- 3.1 These Rules apply to all the hearings of the Appellate Authority in the exercise of its statutory power of decision, as defined in the *Statutory Powers Procedure Act*, R.S.O. 1990, c.S.22, as amended.
- 3.2 The Appellate Authority may exercise any of its powers under these Rules or applicable law on its own initiative or at the request of any party.
- 3.3 These Rules do not apply if a statute or the Code provides for a different procedure to govern proceedings of the Appellate Authority in the exercise of its statutory powers of decision.
- 3.4 Where procedures are not provided for in these Rules or the Appellate Authority determines it is appropriate to grant an exception to these Rules, the Appellate Authority may do what is necessary and permitted by law to justly and effectively adjudicate matters before it.

4. CALCULATING THE TIME REQUIREMENTS

- 4.1 In calculating time under these Rules or a procedural order, except where a contrary intention appears:
- a) all references are to calendar days;
 - b) reference to a number of days between two events shall be counted by excluding the day on which the first event happens and including the day on which the

second event happens;

- c) where the time for doing an act under these Rules or under an order expires on a holiday, the act may be done on the next day that is not a holiday; and
- d) A document sent after 4:00 p.m. or at any time on a holiday shall be deemed to have been received on the next day that is not a holiday.

4.2 Where a time of day is mentioned in these Rules or in any document or order in a proceeding, the time referred to shall be the time in Toronto.

4.3 The Appellate Authority may extend or abridge any time prescribed in these Rules or established by a procedural order during a proceeding on such terms as it considers just and reasonable.

4.4 Under these Rules, "holiday" means;

- a) any Saturday or Sunday;
- b) New Year's Day;
- c) Family Day;
- d) Good Friday;
- e) Easter Monday;
- f) Victoria Day;
- g) Canada Day;
- h) Civic Holiday;
- i) Labour Day;
- j) Thanksgiving Day;
- k) Remembrance Day;
- l) Christmas Day;
- m) Boxing Day and;
- n) Any day on which the staff offices of the Appellate Authority are closed.

5. EXCHANGE OF DOCUMENTS

- 5.1 The Appellate Authority may require any party or the Authority Administrator to provide any document to any party or person in any of the following ways, or any combination thereof:
- a) by e-mail to the party or person's last known e-mail address;
 - b) by regular or registered mail to the party or person's last known address;
 - c) by courier to the party or person's last known address;
 - d) by fax at the party or person's last known fax number;
 - e) by personal service by delivering the document to the party or person; and/or
 - f) as directed by the Appellate Authority.
- 5.2 All parties shall receive every document that the Appellate Authority receives for a hearing prior to the commencement of the hearing.
- 5.3 A document may be sent by email to a party or person's last known email address or by fax to a party or person's last known fax number and is deemed received on the day it is sent.
- 5.4 Documents provided by personal service or by courier are served on the day that they are delivered.
- 5.5 If a document is sent by regular or registered mail, it is deemed to be received five (5) days after mailing.
- 5.6 The Appellate Authority may direct the Authority Administrator or any party to confirm that documents have been sent or received by the person to whom they were sent, including, if appropriate, providing proof satisfactory to the Appellate Authority that documents were sent or received in accordance with these Rules.

6. COMMUNICATIONS WITH THE APPELLATE AUTHORITY

- 6.1 All communications with the Appellate Authority must include the following information:
- a) Full name of the sender, including their phone number and email address, and whether they are a party or, if not, their status or relationship to the party.
 - b) Appellate Authority's case file number, property address, and assessment roll number, and tax year
 - c) If the communication is by email, all of the information in (b) must be inserted in the subject line;
 - d) The reason for the communication; and
 - e) If applicable, a list of the documents attached to the communication, including the attachment(s) file name if it is being sent electronically and a short description of the document(s).
- 6.2 Communications to the Appellate Authority must be copied to all other part(ies) or their representative(s).
- 6.3 Filing of any document by any party or person may be effected by providing the document to the Appellate Authority by:
- a) email to the address on the Authority's website;
 - b) by fax to the number on the Authority's website;
 - c) by ordinary or registered mail to the address on the Authority's website;
 - d) by courier;
 - e) by personal delivery, or otherwise as the Appellate Authority may order.
- 6.4 Where a document is filed, the date of the receipt stamp on the document shall be deemed to be the date of the filing, unless the Appellate Authority orders otherwise.
- 6.5 Where the Appellate Authority has no record of the receipt of a document alleged to have been filed, the documents shall be deemed not to have been filed unless the Appellate Authority orders otherwise.

6.6 Where documents are filed with the Appellate Authority that relate to an appeal the Appellate Authority or the Authority Administrator may decide not to process the appeal if:

- a) The documents are incomplete;
- b) The documents are received after the time prescribed in the Notice of Hearing;
- c) There is some other technical defect in the appeal.

6.7 Before declining to process an appeal, the Appellate Authority or the Authority Administrator will notify the party who filed the appeal and will give the party such time as the Authority determines appropriate to comply with the requirements.

7. FORM OF DOCUMENTS

7.1 Every document required for a proceeding shall:

- a) contain text that is legibly written, printed, or typed and, where practicable, the document shall be double spaced and double sided and include legible page numbers for ease of reference by the Authority and parties; and/or
- b) if an electronic record, be delivered in a commonly available electronic format, such as PDF, jpeg or tiff, with a file name that incorporates the Authority's case file number and is saved as a read only file, if possible.

8. DATE AND MANNER OF HEARINGS

8.1 The Appellate Authority shall set the date and time of hearings.

8.2 Hearings shall take place on the date and in the manner determined by the Appellate Authority, unless the Appellate Authority orders otherwise.

8.3 If the parties consent, a proceeding may be disposed of by a decision of the Appellate Authority given without a hearing.

- 8.4 The Appellate Authority may dismiss an appeal without a hearing if,
- a) the appeal is frivolous, vexatious or is commenced in bad faith;
 - b) the appeal relates to matters that are outside the jurisdiction of the Appellate Authority; or
 - c) the appellant has not responded to a request by the Appellate Authority for further information within the time specified by the Authority;
 - d) the appellant has not complied with the statutory requirements or these Rules; or
 - e) the appellant has abandoned the appeal.
- 8.5 Before dismissing the appeal, the Appellate Authority will notify the parties of its intention to dismiss the appeal and the reasons for the dismissal and provide the parties with such time as the Authority determines appropriate to make written submissions with respect to the dismissal.

9. WRITTEN HEARINGS

- 9.1 All hearings shall be in writing unless the Appellate Authority directs otherwise.
- 9.2 A party may file with the Appellate Authority, and serve on all other parties, a written objection to the written hearing and request an electronic hearing within five (5) days of service of the Notice of Hearing or by such other date as specified by the Authority. The written objection must include reasons for the party's objection and state the material facts on which the party relies for its objection.
- 9.3 The Authority may consider any relevant factors in deciding to hold an electronic hearing, including but not limited to:
- a) the convenience to the parties and the Authority;
 - b) the likelihood of the process being less costly and more efficient;
 - c) whether it is a fair and accessible process for the parties;
 - d) the desirability or necessity of public participation in, or public access to, the

Authority's process;

- e) whether the evidence or issues are suitable for an electronic hearing; or
- f) whether an electronic hearing is likely to cause significant prejudice to any party or participant.

9.4 If an objection to a written hearing is raised, the Authority may:

- a) convert the hearing event to an electronic hearing;
- b) continue with the written hearing, with or without conditions; or
- c) make any other order the Authority considers appropriate.

10. APPEAL DOCUMENTS

10.1 For appeals under s. 23.0.12(2)(1.) of Ontario Regulation 282/98, Appeal Documents shall comply with Rule 7 and must contain:

The party's evidence that the Eligible Property qualifies or does not qualify, as the case may be, for inclusion in the Small Business Subclass that is either that:

- (1) The current value assessment of the Eligible Property is or is not, as the case may be, \$1,000,000 or less; or
- (2) The Eligible Property meets or does not meet, as the case may be, all of the following requirements:
 - (a) The Eligible Property is located within the geographic areas identified as Downtown and Central Waterfront, Avenues or Centres on the map titled: Designated Areas for the City of Toronto Small Business Subclass attached as Appendix 1 to Code Chapter 767 Article 12; and
 - (b) The Eligible Property has a lot size of 7,500 square feet or less, or in the case of Eligible Property classified as a commercial condominium unit has a gross floor area of 2,500 square feet or less; and
 - (c) The Current Value Assessment of the Eligible Property, is \$7,000,000 or less.

10.2 For appeals under s. 23.0.12(2)(2.) of Ontario Regulation 282/98, Appeal Documents shall comply with Rule 7 and must contain:

The party's evidence that they have complied or not complied, as the case may be,

with an audit.

- 10.3 For appeals under s. 23.0.12(2)(3.) of Ontario Regulation 282/98, Appeal Documents shall comply with Rule 7 and must contain:

The party's evidence that the property meets or no longer meets, as the case may be, the requirements in section 23.0.9(1) of Ontario Regulation 282/98.

11. CONDUCT OF ELECTRONIC HEARINGS

- 11.1 Where a hearing is conducted electronically, the Appellate Authority shall control the conduct of the hearing, including the order of presentation of evidence and submissions.

- 11.2 A hearing shall be conducted in the following order of presentation, unless the Appellate Authority directs otherwise:

- a) The appellant may make an opening statement following which the Program Administrator or any other party may make an opening statement;
- b) An appellant may present their evidence and when the appellant's evidence is concluded, the Program Administrator and any other party may present their evidence;
- c) After all of the evidence has been presented by all parties to the proceeding, the appellant may make a closing statement followed by the closing statement of the Program Administrator or the other party

- 11.3 The Appellate Authority may stipulate the time permitted for any hearing or part of a hearing.

- 11.4 The Appellate Authority may limit further examination or cross-examination of a witness where the Appellate Authority is satisfied that the examination or cross-examination has been sufficient to disclose fully and fairly all matters relevant to the matters at issue.

- 11.5 All the parties and the Appellate Authority must be able to hear and see, or hear one another and any witnesses throughout the hearing.
- 11.6 No audio or video recording, photograph or other record capable of transmission may be made or taken of an electronic hearing without the consent of the parties and authorization of the Appellate Authority.

12. EVIDENCE OF WITNESSES DURING A HEARING

- 12.1 The evidence of a witness at the written hearing shall be given by affidavit or as directed by the Authority.
- 12.2 Where a proceeding is conducted electronically, and unless the Appellate Authority directs otherwise, witnesses shall be examined orally and the examination may consist of direct examination, cross examination, and re-examination.
- 12.3 The Appellate Authority shall ensure that there is no undue harassment or embarrassment of the witness as they are giving evidence and may disallow a question put to the witness that is vexatious or irrelevant to any matter that may be properly inquired into at the hearing.
- 12.4 The Appellate Authority may at any time during a hearing direct that a witness be recalled for further examination.
- 12.5 Where a witness appears unwilling or unable to give answers to the questions being posed, the Appellate Authority may permit the party calling the witness to examine them by asking leading questions.

13. APPEAL DOCUMENTS AT AN ELECTRONIC HEARING

- 13.1 At an electronic hearing, parties shall provide one copy of their Appeal Documents to all other parties and the Authority Administrator so that they are received no later than ten (10) days before the electronic hearing.
- 13.2 Where a party fails to deliver their Appeal Documents in advance of the electronic hearing, they may make submissions to the Appellate Authority at the electronic hearing to explain why the Appellate Authority should consider the documents. The party must email the Appeal Documents to the Authority Administration and the other party (parties).
- 13.3 The Appellate Authority will decide whether to consider any Appeal Documents submitted by a party, including any Appeal Documents delivered less than ten (10) days before the electronic hearing.
- 13.4 The Appellate Authority will allow the filing of updated public records less than ten (10) days before the electronic hearing.
- 13.5 The Appellate Authority may make any documents received and considered by it available to the public upon request, subject to any order of the Authority.

14. FAILURE TO ATTEND A HEARING

- 14.1 Where a party is served with a Notice of Hearing and the party does not object to the written hearing format, nor participates in the hearing in accordance with the notice, the Appellate Authority may proceed in that party's absence and without further notice to that party, and may dismiss the appeal without a hearing.
- 14.2 Where a party is served with a Notice of Hearing for electronic hearing and does not attend at the time appointed, the Appellate Authority may proceed in that party's absence and without further notice to that party, and may dismiss the appeal without a hearing.

15. ADJOURNMENT REQUESTS

- 15.1 Adjournment requests should be made in writing and as soon as possible, and comply with Rules 6 and 7 as applicable.
- 15.2 Adjournment requests must indicate if consent of other parties has been sought or obtained.
- 15.3 Where an adjournment is on consent, the Authority Administrator may reschedule the matter to another date or refer the adjournment request to the Appellate Authority.
- 15.4 An adjournment request must include, in addition to the information required by Rule 6.1:
- a) the date the hearing is scheduled for that the party is asking be adjourned;
 - b) an explanation of why the request is being made; and
 - c) proposed alternative dates when the party is available and to which the hearing may be rescheduled or a request that the hearing not be scheduled until after a certain point in time or event.
- 15.5 The other party may advise the Authority and the other party in writing of its support for or opposition to the request and alternative dates upon which the party is available for the hearing to be rescheduled.
- 15.6 In deciding whether or not to grant an adjournment, the Authority shall consider any relevant factors, including:
- a) the reasons for an adjournment;
 - b) the interests of the parties in having a full and fair proceeding;
 - c) the integrity of the Authority's process;
 - d) the timeliness of an adjournment;
 - e) the position of the other parties on the request;

- f) whether an adjournment will cause or contribute to any existing or potential harm or prejudice to others;
- g) the effect an adjournment may have on parties or other persons; and
- h) the effect an adjournment may have on the ability of the Authority to conduct the proceeding in a just, timely and cost-effective manner.

15.7 In granting an adjournment, the Authority may impose such conditions as it considers appropriate.

16. PROCEDURAL ORDERS

16.1 At the request of a party or on its own initiative and at any stage of the proceeding, the Appellate Authority may make such procedural orders as it considers just and necessary for the conduct of a hearing.

16.2 The Appellate Authority may amend any procedural order at any time during a proceeding.

16.3 A procedural order shall prevail over any provision of these Rules that is inconsistent with the procedural order.

17. FAILURE TO COMPLY WITH RULES OR PROCEDURAL ORDER

17.1 Where a party to a proceeding has not complied with any Rule or procedural order, the Appellate Authority may:

- a) adjourn the proceeding until it is satisfied that such Rule or order has been complied with; or
- b) take such other steps as it considers just and reasonable.

17.2 No proceeding is invalid by reason only of a defect or other irregularity in form.

18. MOTIONS

18.1 Motions shall be heard in writing unless the Appellate Authority directs otherwise.

18.2 Where a party or other person intends to bring a motion before the Appellate Authority, it shall provide notice of the motion to all other parties at least ten (10) days, or as soon as practical, in advance of the hearing date, and comply with Rules 6 and 7 as applicable.

18.3 The notice of motion shall be in writing and may be in a form provided by the Appellate Authority or in another written form as long as the notice includes:

- a) a description of the order being requested and why it is being sought;
- b) any evidence to be relied upon at the hearing of the motion and the names of any witness(es) and a summary of the anticipated evidence that will be provided by affidavit;
- c) references to any statutes, by-laws or cases being submitted in support of the motion, if applicable; and
- d) a statement notifying the responding party that, if they wish to oppose the motion, they may do so by delivering written material and filing it with the Authority Administrator.

18.4 If a responding party opposes the motion, they shall provide written submissions that may be in a form provided by the Authority or in another written form so long as the submissions include:

- a) a description of why the order is being opposed;
- b) any evidence to be relied upon and, if the party will seek to rely upon oral evidence, the names of any witness(es) and a summary of the anticipated oral evidence. If the responding party's evidence and summary do not dispute the evidence and summary relied on by the moving party, the Authority may deem the responding party to have agreed to the moving party's facts and proceed

accordingly; and

- c) references to any statutes, by-laws or cases relevant to the motion, if applicable.

18.5 The responding party's written submissions shall be provided to all other parties no later than two (2) business days prior to the date set for hearing the motion, and comply with Rules 6 and 7 as applicable.

18.6 The person bringing the motion and any responding party shall each file with the Authority Administrator a copy of the documents provided for the motion at the same time as the documents are provided to the other person or party.

18.7 Prior to or at the hearing of the motion, the Authority may modify the motion requirements, including to:

- a) abridge the time required for notice of the motion to have been delivered;
- b) direct that the motion will be considered by way of an electronic hearing; or
- c) permit oral evidence and/or cross examinations at the hearing of the motion; and/or
- d) otherwise as it considers just for the fair determination of the issue.

19. CORRECTIONS OF ORDERS AND DECISIONS

19.1 The Appellate Authority may at any time correct a typographical error, error of calculation or other similar error made in a decision or order.