

CITY OF NANAIMO

BYLAW NO. 7354

A BYLAW TO ESTABLISH THE PROCEDURE FOR HEARING APPEALS

WHEREAS the Council of the City of Nanaimo has a number of bylaws that provide an opportunity to appeal a delegated decision to Council;

AND WHEREAS Council wishes to delegate to enact its process for the conduct of such appeals;

THEREFORE BE IT RESOLVED that the Council of the City of Nanaimo in open meeting assembled, ENACTS AS FOLLOWS:

1. Title:

This Bylaw may be cited as “APPEALS PROCEDURE BYLAW, 2022 NO. 7354”.

2. Interpretation:

2.1 Except as otherwise defined in this Bylaw, words or phrases herein will be construed in accordance with their meanings under the [Community Charter, SBC 2003, c.26](#), [Local Government Act, RSBC 2015, c.1](#), and [Interpretation Act, RSBC 1996, c.238](#), as context and circumstances may require.

2.2 A reference to a statute refers to a statute of the Province of British Columbia, and a reference to any statute, regulation or bylaw refers to that enactment, as amended or replaced from time to time.

2.3 Headings in this Bylaw are for convenience only and must not be construed as defining, or in any way limiting the scope or intent of this Bylaw.

2.4 If any part of this Bylaw is held to be invalid by a court of competent jurisdiction, the invalid part is severed and the remainder continues to be valid.

3. Definitions:

“Appeal”	Means reconsideration by Council of a decision by an Employee.
“Appellant”	Means the person seeking an appeal, or an appointed representative.
“City”	Means the City of Nanaimo.
“Council”	Means the Council of the City of Nanaimo.
“Director of Legislative Services”	Also known as the “Corporate Officer” under the Section 148 of the <i>Community Charter</i> .
“Employee”	Means the Employee of the City who has been delegated to make a decision affecting the Appellant under a City bylaw or pursuant to a Provincial enactment.

“Hearing”	Means the hearing of the Notice of Appeal.
“Notice of Appeal”	Means a written request for an Appeal as established in Section 6.1.

4. Decisions which may be appealed

This Bylaw applies to decisions made by an Employee under bylaws identified in Schedule “A”, and under other enactments whereby decision making has been delegated to a person other than Council and that provide for a right to reconsideration by Council.

5. Application:

In the event of a conflict between this Bylaw and another City bylaw or policy governing reconsideration by Council, this Bylaw governs.

6. Appeal Procedure:

6.1 A person who is affected by a decision of an Employee and wishes to Appeal must file a Notice of Appeal, to the Director of Legislative Services, within 30 days of the date the Employee’s decision was delivered, and include the following information:

- (a) The name, address, email address (if applicable), and telephone number of the Appellant;
- (b) A copy of the decision or direction of the Employee, and any supporting information or material provided to the Appellant by the Employee;
- (c) The reasons explaining why the Appellant believes it should be amended or set aside, and any supporting information;
- (d) The request being made of Council, including how the decision or direction should be varied, or what alternative decision or direction should be substituted for that of the Employee, and any supporting information;
- (e) Any steps that the Appellant has taken to discuss the matter directly with the Employee, where applicable;
- (f) A summary of any relevant current and proposed legislation and policy that the Appellant intends to rely on; and
- (g) Any further information, evidence or other materials that the Appellant wishes to be considered by Council.

6.2 Notwithstanding Section 6.1, Applicants wishing to Appeal decisions on the following bylaws must file a Notice of Appeal within 14 days of the date the Employee’s decision was delivered:

- (a) Flood Prevention Bylaw 1996 No. 5105;
- (b) Property Maintenance and Standards Bylaw 2017 No. 7242; and
- (c) Management and Protection of Trees Bylaw 2013 No. 7126.

6.3 Pre-Hearing Procedure:

(a) The Director of Legislative Services is responsible for reviewing the Notice of Appeal, determining whether the requirements under this Bylaw have been

met, and communicating with the Appellant and others on matters related to the Appeal.

- (b) Upon receiving the Notice of Appeal, the Director of Legislative Services will:
 - (i) confirm whether the Employee decision on a matter may be appealed, in accordance with section 4;
 - (ii) confirm whether requirements for the submission, as set out in section 6.1 are met; and
 - (iii) notify the Employee whose decision is being appealed of the Notice of Appeal.
- (c) Where, in the opinion of the Director of Legislative Services, the Notice of Appeal does not comply with the requirements for an Appeal established under section 6.1, the Director of Legislative Services will notify the Appellant accordingly. If the Appellant does not deliver a fully compliant Notice of Appeal within ten (10) days following the date of the notice sent by the Director of Legislative Services, the Appeal will not proceed to Hearing and the decision of the Employee will be deemed final.
- (d) Upon receipt of a Notice of Appeal, the Director of Legislative Services will arrange for a Hearing.
- (e) The Director of Legislative Services will provide the Appellant and the Employee written notice of the date, time and location of the Hearing.
- (f) Prior to the date established for the Hearing, the Director of Legislative Services will provide a package to Council regarding the Appeal, including all materials to be considered by Council, as provided by the Appellant and the Employee. A copy of the package will be available to the Appellant and the Employee at the Office of the Director of Legislative Services.

6.4 Hearing:

- (a) Hearings will be held in an open meeting, except as otherwise required by the *Community Charter* or another Act, or at the discretion of Council as may be permitted by law.
- (b) In addition to materials provided by the Director of Legislative Services under 6.2(f), Council may also request and consider further information from the Appellant, the Employee, other City staff or any person whom Council believes has relevant knowledge, expertise or sufficient interest in the matter.
- (c) Council may adjourn the Hearing at any time to obtain additional information where it considers such information would assist Council in determining the Appeal.
- (d) During the Hearing, the Appellant may be accompanied by an advocate legal counsel or another support person and an interpreter/translator.
- (e) During the Hearing, the City may have its legal counsel present.
- (f) During the Hearing, Council will first hear from staff in relation to the subject matter of the decision and in relation to the decision itself.
- (g) The Appellant will be provided an opportunity to explain their position.
- (h) Council may then hear from staff in relation to any new information raised by the Appellant and ask questions of the Appellant, the Employee, a witness, or any other person appearing at the Hearing.

6.5 Decision:

- (a) After considering the Notice of Appeal and any further submissions, information and materials it considers relevant to the Appeal Council will make any decision it considers appropriate in respect of the matter, and in doing so

may confirm the decision, amend the decision, or cancel the decision or direction of the Employee.

- (b) The Director of Legislative Services will promptly notify the Appellant and the Employee of the decision of Council; and will provide any written reasons of Council within seven (7) days following the date of the Hearing.

6.6 Exceptions

Where authorities exist under a provincial or federal enactment, the appeal procedure of that enactment applies.

PASSED FIRST READING: 2022-SEP-21
PASSED SECOND READING: 2022-SEP-21
PASSED THIRD READING: 2022-SEP-21
ADOPTED: 2022-OCT-03

L. E. KROG

MAYOR

S. GURRIE

CORPORATE OFFICER

SCHEDULE "A"

City Bylaws Providing the Opportunity to Appeal a Decision of an Employee

- [Business Licence Bylaw No. 7318](#)
- [Chauffeurs Regulation Bylaw No. 1508](#)
- [Flood Prevention Bylaw No. 5105](#) [Notice of Appeal must be filed within 14 days]
- [Inter-Community Business Licence Bylaw No. 7176](#)
- [Management and Protection of Trees Bylaw No. 7126](#) [Notice of Appeal must be filed within 14 days]
- Officer Designation and Delegation of Authority Bylaw No. 7353
- [Property Maintenance and Standards Bylaw No. 7242](#) [Notice of Appeal must be filed within 14 days]
- [Sewer Regulation and Charge Bylaw No. 2496](#)
- [Traffic and Highways Regulation Bylaw No. 5000](#)
- [Waterworks Rate and Regulation Bylaw No. 7004](#)