

《建築物 (上訴) 規例》
(第 123 章，附屬法例 L)
Building (Appeal) Regulation
(Cap. 123 sub. leg. L)

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經核證文本
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制定史

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(第 123 章，附屬法例 L)

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《建築物(上訴)規例》

(第 123 章第 38(1B) 條)

(略去制定語式條文——2021 年第 2 號編輯修訂紀錄)

[1994 年 11 月 16 日]

(格式變更——2021 年第 2 號編輯修訂紀錄)

1. (已失時效而略去——2021 年第 2 號編輯修訂紀錄)

2. 釋義

在本規例中，除文意另有所指外——

上訴人 (appellant) 指已發出上訴通知的人；**上訴通知** (notice of appeal) 指第 3 條所提述的上訴通知；**主席** (Chairman) 指根據本條例第 48(1) 條委任的審裁小組主席；**初步聆訊** (preliminary hearing) 指根據本條例第 49 條進行的聆訊；**秘書** (Secretary) 指根據本條例第 46 條委任的上訴審裁小組秘書；**聆訊** (hearing) 指上訴聆訊，並包括初步聆訊；**經延展的期限** (extended period) 就個別個案而言，指根據第 13 條所容許的期限；**審裁小組** (Tribunal) 就個別上訴而言，指根據本條例第 48(1) 條委出以就該上訴進行聆訊和作出裁定的審裁小組。

Building (Appeal) Regulation

(Cap. 123, section 38(1B))

(Enacting provision omitted—E.R. 2 of 2021)

[16 November 1994]

(Format changes—E.R. 2 of 2021)

1. (Omitted as spent—E.R. 2 of 2021)

2. Interpretation

In this Regulation, unless the context otherwise requires—

appellant (上訴人) means a person who has given notice of appeal;**Chairman** (主席) means the chairman of the Tribunal appointed under section 48(1) of the Ordinance;**extended period** (經延展的期限) means, in relation to a particular case, a period allowed under section 13;**hearing** (聆訊) means the hearing of an appeal and includes a preliminary hearing;**notice of appeal** (上訴通知) means a notice of appeal referred to in section 3;**preliminary hearing** (初步聆訊) means a hearing held under section 49 of the Ordinance;**Secretary** (秘書) means the Secretary to the Appeal Tribunal appointed under section 46 of the Ordinance;**Tribunal** (審裁小組) means, in relation to a particular appeal, the tribunal appointed under section 48(1) of the Ordinance to hear and determine that appeal.

3. 上訴通知

- (1) 為施行本條例第 47 條而發出的上訴通知，須以書面發出並送達秘書。
- (2) 上訴通知可以下述方式送達秘書：將致予秘書的掛號郵件或一般郵件寄往其辦事處，或藉傳真發送送達秘書，或將通知面交送達秘書。
- (3) 上訴人須在本條例第 47 條所指明的上訴通知發出期限內，將上訴通知文本一份送達建築事務監督。

4. 詳情陳述書

- (1) 上訴人須在上訴通知發出日期起計 28 天內或（如適當）在經延展的期限內，向秘書提交陳述書，載明——
 - (a) 上訴所關乎的決定的詳情；
 - (b) 上訴理由（如並未在上訴通知內指明）；
 - (c) 上訴所關乎的事宜的詳細描述；
 - (d) 上訴人擬在聆訊中交出的每份文件的描述；
 - (e) （如有關的話）上訴所關乎的任何物業或土地的地址及描述，以及上訴人在該物業或土地所佔的權益的陳述；及
 - (f) 上訴人擬在聆訊中傳喚為其作證的證人的詳情。
- (2) 上訴人須在第 (1) 款所提述的期限或經延展的期限（視何者適當而定）內，將該款所提述的陳述書文本一份送達建築事務監督。

3. Notice of appeal

- (1) A notice of appeal for the purposes of section 47 of the Ordinance shall be in writing and served on the Secretary.
- (2) A notice of appeal may be served on the Secretary by sending it to him by registered or ordinary mail addressed to him at his office or facsimile transmission or serving it personally on him.
- (3) The appellant shall serve a copy of the notice of appeal on the Building Authority within the period specified in section 47 of the Ordinance for giving notice of appeal.

4. Statement of particulars

- (1) The appellant shall, within 28 days beginning on the date notice of appeal is given or, where appropriate, within the extended period, furnish to the Secretary a statement containing—
 - (a) the particulars of the decision to which the appeal relates;
 - (b) the grounds of appeal if they have not been specified in the notice of appeal;
 - (c) a detailed description of the matter to which the appeal relates;
 - (d) a description of each document the appellant intends to produce at the hearing;
 - (e) where relevant, the address and description of any property or land to which the appeal relates and a statement of the interest of the appellant in that property or land; and
 - (f) the particulars of the witnesses the appellant intends to call on his behalf at the hearing.

5. 關於是否需要進行初步聆訊的申述及文件

建築事務監督須——

- (a) 在接獲第 4(2) 條所指的陳述書文本當日起計 28 天內或(如適當)在經延展的期限內，向秘書提交申述書，並提交他認為有助審裁小組就該上訴作出裁定或以其他方式處理該上訴並由他管有或保管的文件(如有的話)；及
- (b) 在(a)段所提述的期限或經延展的期限(視何者適當而定)內，向上訴人送達申述書文本一份及根據該段提交的每份文件的副本一份。

6. 提交進一步詳情的要求

- (1) 某項上訴的任何一方藉送達通知而——
 - (a) 要求另一方提交任何與該上訴有關的事宜的進一步詳情；及
 - (b) 要求另一方向他交出他認為與該上訴有關並由該方保管、控制或管有的任何文件，供他查閱，或提交任何該等文件的副本。
- (2) 根據第(1)款提出的要求——
 - (a) 如由建築事務監督提出，則只可在陳述書文本根據第 4(2) 條送達他當日起計的 14 天內提出；及

- (2) The appellant shall serve a copy of the statement referred to in subsection (1) on the Building Authority within the period or extended period, as may be appropriate, referred to in that subsection.

5. Representations and documents as regards need for a preliminary hearing

The Building Authority shall—

- (a) within 28 days beginning on the date of receiving a copy of a statement under section 4(2) or, where appropriate, within the extended period, furnish to the Secretary representations in writing and documents (if any) in his possession or custody, which he considers would assist the Tribunal to determine or otherwise dispose of the appeal; and
- (b) within the period referred to in paragraph (a) or the extended period, as may be appropriate, serve a copy of the representations and a copy each of any document furnished under that paragraph, on the appellant.

6. Request for further particulars

- (1) A party to an appeal may, by serving a notice—
 - (a) request the other party to furnish further particulars on any matter relevant to the appeal; and
 - (b) request the other party to make available to him for inspection any document which he considers relevant to the appeal and which is in the custody, control or possession of that party or to furnish a copy of any such document.
- (2) A request under subsection (1) may only be made—

- (b) 如由上訴人提出，則只可在申述書文本根據第 5(b) 條送達他當日起計的 14 天內提出，
或(如適當)只可在經延展的期限內提出。
- (3) 除非審裁小組信納根據本條提出的要求是不合理的或有合理理由不遵從該要求，否則被要求的一方，須在有關通知送達當日起計的 14 天內或在經延展的期限內(視何者適當而定)遵從該要求。
- (4) 根據第(3)款提交任何詳情或文件副本的一方，須在該款所提述的期限內或在經延展的期限內(視何者適當而定)，向秘書提交該等詳情的副本或該文件的副本或(如適當)兩者的副本。

7. 聆訊通知

秘書須在聆訊編定日期前不少於 21 天，以書面通知每一方聆訊的編定日期和時間及進行聆訊的地點。

8. 證人傳票的發出

審裁小組可應上訴的任何一方提出的申請，發出由主席簽署的傳票，要求任何人出席審裁小組的聆訊提供證據，或交出由其保管、控制或管有的任何文件。

9. 聆訊須公開進行

- (a) by the Building Authority, within 14 days beginning on the date a copy of the statement is served on him under section 4(2); and
- (b) by the appellant, within 14 days beginning on the date a copy of the representations is served on him under section 5(b),
or, where appropriate, within the extended period.
- (3) A party of whom a request is made under this section shall, within 14 days beginning on the date the relevant notice is served or within the extended period, as may be appropriate, comply with such request unless the Tribunal is satisfied that the request was unreasonable or that reasonable grounds exist for not complying with it.
- (4) A party who furnishes any particulars or a copy of a document under subsection (3) shall, within the period referred to in that subsection or within the extended period, as may be appropriate, furnish a copy of the particulars or a copy of such document or, where appropriate, both, to the Secretary.

7. Notification of hearing

Not less than 21 days before the date fixed for a hearing the Secretary shall notify each party, in writing, of the date and time fixed for the hearing and the place at which it will take place.

8. Issue of witness summons

The Tribunal may, on application made in that regard by a party to an appeal, issue a summons signed by the Chairman, requiring a person to appear before the Tribunal at a hearing and give evidence or produce any document in his custody, control or possession.

9. Hearing to be in public

- (1) 除第 (2) 及 (3) 款另有規定外，上訴聆訊須公開進行。
- (2) 審裁小組在諮詢上訴各方後，如信納適宜進行非公開聆訊，可藉命令指示聆訊或其某一部分以非公開形式進行，並就何人可以出席給予指示。
- (3) 審裁小組如根據第 (2) 款作出命令，則可給予指示，禁止向上訴各方或其中數方或第 (2) 款提述的所有人或部分人，發表或披露在審裁小組席前提供的證據，或向其發表或披露任何載於向審裁小組遞交的文件內或載於審裁小組收取為證據的文件內的事宜。
- (4) 審裁小組在根據第 (2) 及 (3) 款行使其權力時，除考慮任何其可考慮的事宜外，並須考慮上訴的任何一方的任何意見或其私人利益及任何關於享有特權的聲稱。
- (5) 在聆訊中出現的任何關於享有特權的聲稱須視為法律問題。

10. 上訴的撤回

- (1) 上訴人可藉向秘書發出書面通知而撤回其上訴或放棄其上訴的任何部分。
- (2) 根據第 (1) 款發出通知的上訴人，須在發出通知後，在切實可行範圍內盡快將通知文本一份送達建築事務監督。

11. 上訴人沒有提交陳述書、詳情等的後果

如審裁小組信納上訴人沒有——

- (a) 根據第 3(3) 條向建築事務監督送達上訴通知文本；
- (b) 根據第 4(1) 條提交陳述書或根據第 4(2) 條送達陳述書文本；或

- (1) Subject to subsections (2) and (3), the hearing of an appeal shall be in public.
- (2) The Tribunal may, by order, direct that a hearing or part of a hearing is to be held in private, if after consulting the parties to the appeal it is satisfied that it is desirable to do so, and give directions as to the persons who may be present.
- (3) Where the Tribunal makes an order under subsection (2), it may give directions prohibiting the publication or disclosure to some or all of the parties to the appeal, or to some or all of the persons referred to in subsection (2), of evidence given before the Tribunal or any matter contained in a document lodged with or received in evidence by the Tribunal.
- (4) In exercising its powers under subsections (2) and (3), the Tribunal shall, in addition to any other matter it may take into account, take into account any views or the private interests of and any claim as to privilege by any party to the appeal.
- (5) Any claim as to privilege arising at a hearing shall be treated as a question of law.

10. Withdrawal of appeal

- (1) The appellant may withdraw his appeal or abandon any part of it by giving notice in writing to the Secretary.
- (2) An appellant who gives a notice under subsection (1) shall serve a copy thereof on the Building Authority as soon as practicable after giving it.

11. Consequences of failure by appellant to furnish statements, particulars, etc.

Where the Tribunal is satisfied that the appellant has failed to—

- (a) serve a copy of the notice of appeal on the Building Authority under section 3(3);

(c) 遵從根據第 6(2) 條提出的要求，
則審裁小組可駁回上訴。

12. 聆訊紀錄及決定的發表

- (1) 在任何聆訊中，主席須記錄或安排記錄上訴理由、上訴人姓名或名稱、被傳召或出席聆訊的所有證人的姓名、已提供的證據，以及審裁小組的決定、作出該決定的理由及任何繳付訟費的命令。
- (2) 審裁小組在聆訊結束後所作的決定、作出該決定的理由及任何繳付訟費的命令須由主席及審裁小組的其他各成員簽署，並須有文本各一份送達上訴人及建築事務監督。
- (3) 審裁小組可以其認為適合的方式發表第 (2) 款所提述的任何決定，包括在根據第 9(2) 條全部或部分以非公開形式進行的聆訊結束後所作的決定。

13. 延展時限

- (1) 審裁小組如認為適當，可應任何一方的申請，就該申請所關乎的個案，延展第 4(1)、5(a) 或 6(2) 或 (3) 條所指明的任何時限。
- (2) 審裁小組根據第 (1) 款而具有的權力可由主席行使。

14. 送達通知等

除第 3(2) 條另有規定外，就本規例而言，任何通知、陳述書、命令、傳票、詳情書或其他文件的送達，須以下述方式完

- (b) furnish a statement under section 4(1) or serve a copy of it under section 4(2); or
- (c) comply with a request made under section 6(2),
it may dismiss the appeal.

12. Record of hearing and publication of decision

- (1) At any hearing the Chairman shall record or cause to be recorded the grounds of appeal, the name of the appellant, the names of all the witnesses who have been summoned or have appeared at the hearing, the evidence given and the decision of the Tribunal and the reasons for it and any order for costs.
- (2) The decision of the Tribunal at the conclusion of a hearing, reasons for the decision and any order for costs shall be signed by the Chairman and the other members of the Tribunal and a copy of each of those shall be served on both the appellant and the Building Authority.
- (3) The Tribunal may publish, in a manner it thinks fit, any decision referred to in subsection (2), including a decision made at the conclusion of a hearing the whole or any part of which was held in private under section 9(2).

13. Extension of time limits

- (1) The Tribunal may upon application by a party extend, as regards the case to which the application relates, any time limit specified in section 4(1), 5(a) or 6(2) or (3), if it considers it appropriate to do so.
- (2) The power of the Tribunal under subsection (1) may be exercised by the Chairman.

14. Service of notices, etc.

Subject to section 3(2), for the purposes of this Regulation, the service of any notice, statement, order, summons, particulars

成——

- (a) 如送達審裁小組或秘書，須面交送達秘書，或以掛號郵遞方式寄往秘書的辦事處致予秘書；
- (b) 如送達建築事務監督，則須面交送達，或以掛號郵遞方式寄往建築事務監督的辦事處致予建築事務監督；及
- (c) 如送達上訴人或任何其他人士——
 - (i) 而該人是個人，則須面交送達，或以掛號郵遞方式寄往該人最後為人所知的居住地點致予該人；或
 - (ii) 而該人並非個人，則須以掛號郵遞方式寄往該人的註冊地址或最後為人所知的營業地點。

in writing or other document shall be effected, in the case of service—

- (a) on the Tribunal or the Secretary, by serving it or them personally on the Secretary or by sending by registered post addressed to him at his office;
- (b) on the Building Authority, by serving it or them personally or by sending by registered post addressed to the Building Authority at his office; and
- (c) on an appellant or any other person—
 - (i) who is an individual, by serving it or them personally or by sending by registered post addressed to him at his last known place of residence; or
 - (ii) who is not an individual, by sending it or them by registered post to its registered address or last known place of business.