

RED HILL VALLEY PARKWAY INQUIRY

RULES REGARDING APPLICATIONS TO PARTICIPATE AND SEEK FUNDING

A. General

1. On April 24, 2019, pursuant to section 274 of the *Municipal Act 2001*, S.O. 2001, c. 25, the Council of the City of Hamilton established the Red Hill Valley Parkway Inquiry (the “Inquiry”) and affirmed its terms of reference (the “Terms of Reference”).
2. The Honourable Mr. Justice Herman Wilton-Siegel (the “Commissioner”) has issued these Rules Regarding Applications to Participate and Seek Funding (“Rules”) to facilitate the efficient disposition of applications to participate in the Inquiry or to seek funding.
3. These Rules have been issued in the Commissioner’s discretion and subject to the *Public Inquiries Act, 2009*, S.O. 2009, c. 33, Sched. 6, and the Terms of Reference.
4. The Commissioner may amend these Rules or dispense with compliance of these Rules, including in respect of any timelines, as he deems necessary to ensure the Inquiry is thorough, fair, efficient, and timely.
5. All persons applying to participate and their counsel are bound by these Rules and the Commissioner may deal with a breach of these Rules as he deems appropriate.
6. In these Rules, “person” and “persons” refer to individuals, groups, corporations, governments, agencies, institutions or any other entity.

B. Applications to participate

7. Persons may apply:

- (a) to participate in the Inquiry; and
- (b) to have the Commissioner recommend to the City of Hamilton that the person receive funding to permit that person to participate in the Inquiry (in either case, an “applicant” and an “application”).

8. An application must include the following information:

- (a) the applicant’s name, address, telephone number, and e-mail address;
- (b) the name of the licensee of the Law Society of Ontario, if any, representing the applicant, together with the licensee’s address, telephone number, and email address;
- (c) the nature of the applicant’s interest in the subject matter of the Inquiry, why the applicant wishes to participate, and how the applicant proposes to contribute to the Inquiry, having specific regard to the Terms of Reference;
- (d) if applicable, the reasons why the applicant requires funding and evidence in support of those reasons;
- (e) whether or not the applicant requests that any portion of the application should be kept confidential; and

- (f) whether or not the applicant wishes to make oral submissions in support of the application.

9. Applications, including supporting materials, must be filed by text searchable and bookmarked .PDF files sent to rcenta@rhvpi.ca on or before November 29, 2019, at noon, or on any other date with leave of the Commissioner.

10. All materials filed in support of an application to participate, and all updates regarding the applications, will be posted on the Inquiry's website at www.rhvpi.ca, subject to any confidentiality order made by the Commissioner.

C. Oral Hearings

11. The Commissioner will review the applications and determine whether or not he will permit oral submissions to be made in support of the applications.

12. If the Commissioner wishes to hear oral submissions from one or more applicants, he will provide applicants with notice of the permitted length of the oral submissions, as well as the date, time, and location for the submissions no later than 7 days before the date for the oral submissions.

13. An applicant invited to make oral submissions in support of the application may appear in person or may be represented by the licensee named in the application.

D. Determining the Applications

14. When determining whether an applicant should be granted the right to participate in some or all parts of the Inquiry, the Commissioner may consider if an applicant:

- (a) has a substantial and direct interest in the subject matter of the Inquiry;
- (b) is uniquely situated to offer information or assistance to the Inquiry and/or whether the applicant shares a common interest or perspective with other applicants;
- (c) is likely to be notified of a possible finding of misconduct by the Inquiry;
- (d) would assist the conduct of the Inquiry; and
- (e) would contribute to the openness and fairness of the Inquiry.

15. The Commissioner's decisions regarding the applications are made in his sole discretion and are final.

16. The Commissioner may grant an applicant the right to participate in some or all parts of the Inquiry (a "Participant"), individually or as a group of applicants, including the right to:

- (a) access to a database of relevant documents;
- (b) comment on background materials or written evidence prepared by Commission Counsel;
- (c) propose individuals to be interviewed or to appear as witnesses at the Inquiry's public hearing;
- (d) examine witnesses at the Inquiry's public hearing; and
- (e) make oral or written submissions to the Commissioner.

17. When determining the form and extent of each applicant's role as a Participant, the Commissioner will consider:

- (a) that Commission Counsel have the primary responsibility of representing the public interest throughout the Inquiry, including the responsibility of ensuring that all matters that bear upon the public interest are canvassed; and
- (b) the need to balance the importance of a thorough inquiry with the need to minimize duplication to the extent possible; and
- (c) the extent to which each applicant's participation would assist the Commissioner to fulfill his role to inquire into matters set out in the Terms of Reference and write a comprehensive and meaningful report of his findings.

18. All persons who are granted status as Participants will be required to comply with the Inquiry's Rules of Procedure, which will include an obligation to produce all relevant documents in the Participant's possession and control in a format directed by the Commissioner.

19. Where the Commissioner concludes that a Participant would not be able to participate in the Inquiry without receiving funding, the Commissioner may recommend to the City of Hamilton that it provide the Participant with funding to the extent of that Participant's interest in accordance with the City of Hamilton's funding criteria, attached as Appendix A to these Rules. The final decision on whether or not to provide funding and, if so, the level of funding, will be made by the City of Hamilton acting in its sole discretion.

APPENDIX A



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Hamilton

10. Red Hill Valley Parkway Enquiry Update (LS19036) (City Wide) (Item 10.10)

- (a) That the Funding Approval Guidelines for individuals seeking Standing at the Judicial Inquiry, recommended by the Commissioner and attached as Appendix "F" to Report 19-020, be approved;
- (b) That the direction provided to staff in Closed Session, respecting Report LS19036, the Red Hill Valley Parkway Enquiry Update, be approved;
- (c) That the direction provided to staff in Closed Session, respecting Report LS19036, the Red Hill Valley Parkway Enquiry Update, remain confidential until approved by Council on October 23, 2019; and,
- (c) That the Confidential Appendix "D" to Report LS19036, respecting the Red Hill Valley Parkway Enquiry Update, remain confidential.

I hereby certify the foregoing to be a true copy of Item 10 of the General Issues Committee Report 19-020, approved by City of Hamilton Council at the City Council meeting on October 23, 2019.

Dated at the City of Hamilton on this 28th day of October, 2019.

A handwritten signature in blue ink, appearing to read "A. Holland".

A. Holland
City Clerk

Funding Approval Guidelines for individuals seeking Standing at the Judicial Inquiry

Appendix "F" to Item 10 of GIC Report 19-020

- It is not in the public interest to have open-ended funding.
- It is not in the public interest for public funds to provide individuals their lawyer of choice at that lawyer's regular hourly rate.
- The City should establish reasonable hourly rates for senior and junior counsel for the purposes of the Inquiry.
- Whatever hourly rate or scale of compensation the City selects, it should include reasonable time for preparation by counsel as well as for attendance at the hearings
- The City should either limit the number of counsel or specify the use that would be made of junior counsel.
- Counsel should be entitled to compensation for their reasonable and necessary disbursements.
- Where appropriate, disbursement rates should be set.
- Limits should be set on preparation time.
- Time spent at the hearings should be limited to a reasonable number of hours.
- Attendance of counsel at the hearings should be limited to attending when the client's interests are engaged.
- No fees incurred before the date of Council's decision to hold the Inquiry should be paid.
- No fees related to any other matters (e.g., civil litigation) should be paid.
- Counsel's accounts will be subject to assessment.
- The City Manager's decision is final.
- Any additional guidelines the City Manager deems necessary.