

C O M M O N W E A L T H O F M A S S A C H U S E T T S
H O U S I N G A P P E A L S C O M M I T T E E

Housing Appeals Committee Rules of Electronic Filing (E-Filing Rules)
(rev. March 18, 2021, pursuant to **Housing Appeals Committee Standing Order 20-02**)

*(Adapted from SJC Rule 1:25, Massachusetts Rules of Electronic Filing
and from SJC Order: In Re: COVID-19 (Coronavirus) Pandemic, April 6, 2020,
Order Authorizing Use of Electronic Signatures by Attorneys and Self-Represented Parties)*

Rule 1. Scope

(a) Scope. These Rules of Electronic Filing (E-Filing Rules) shall govern the general procedures of electronic filing and service of documents in cases before the Housing Appeals Committee (Committee), pursuant to 760 CMR 56.06(6) and applicable Standing Orders of the Committee.

(b) Committee Record. The official Committee record of proceedings in a case shall include electronic records pertaining to that case filed in accordance with these E-Filing Rules, together with any documents and exhibits filed by Paper Filing and other materials as determined by the Presiding Officer pursuant to 760 CMR 56.00, *et seq.*

Rule 2. Definitions

Clerk. The Clerk of the Housing Appeals Committee.

Electronic filing, E-Filing, or Electronically filed. The submission of documents through the E-Filing System for purposes of filing in a case as herein described.

Electronic Filing System or E-Filing System. The Committee's method for accepting E-Filed documents, as herein described.

Electronic service. The electronic transmission of copies of an electronic filing to the electronic mail (email) address of a party or person or by SharePoint.

Electronic signature or Electronically signed. A signature from a Participant, Presiding Officer, Committee member, or Clerk, that complies with the requirements set forth in Rule 13 below.

Hearing Exhibit. An exhibit proposed to be admitted into evidence in the Committee's adjudicatory hearing on an appeal.

Initial Pleading. The case initiating submission filed in a case before the Committee.

Paper Method or Paper Filing. Filing of documents with the Committee, or service of documents on other parties or persons, and issuance by the Committee or Presiding Officer of orders, rulings and decisions by first class mail, overnight delivery, or hand delivery. *See* 760 CMR 56.06(6), and any rules and procedures that would apply in the absence of electronic filing.

Participant and Non-Participant. A Participant is a person who has an email address and who intends to file documents in a case before the Committee by E-Filing, including attorneys

representing a party, self-represented parties, and any other person who has requested or obtained permission of the Committee to participate in a case before the Committee as an intervener or interested person. All counsel and parties acting *pro se* must be Participants. A Non-Participant is a person who does not have email access and who intends to file documents in a case before the Committee by Paper Filing.

Pleading. A legal document filed by a party or person in a case before the Committee, *e.g.*, letter to the Committee or staff, Initial Pleading, answer, motion, memorandum, brief, stipulation, affidavit, pre-filed testimony, exhibit list, and oppositions or replies respecting any of the foregoing. Exhibits attached to and referenced in Pleadings shall be E-Filed as part of the Pleadings to which they are attached, with each exhibit identified in the Pleading in alphabetical sequence with the identification shown at the beginning of the exhibit.

Presiding Officer. The Committee member or hearing officer assigned to preside over a specific case before the Committee.

PDF. Portable document format, the file format compatible with the latest version of Adobe Reader. Types of PDFs include electronically converted PDFs and scanned PDFs.

- (a) Electronically converted PDFs are created from an electronic source (MS Word, WordPerfect, etc.) using Adobe Acrobat or similar software. They are text searchable, accessible, and their file size is small. Electronically converted PDFs are preferred.
- (b) Scanned PDFs are created from documents run through an optical scanner. Scanned PDFs have a larger file size and lower quality image and should be avoided when possible. Pursuant to Rule 9(a), scanned PDFs must contain optical character recognition of text so that they are text searchable.

SharePoint. The web-based document sharing platform that is used by the Committee for some E-Filing, and is accessible to all Participants.

Rule 3. Participation

Participation in the Electronic Filing System. At the time that Participants enter an appearance, or otherwise as early in the proceedings as possible, they shall notify the Clerk of their email addresses, and shall also designate the email addresses of one or more persons to have access to SharePoint on their behalf for the purposes of E-Filing oversized and other documents required to be filed by SharePoint. Participants shall be responsible for ensuring that the Committee has the correct email addresses of all such individuals at all times.

Rule 4. Electronic Filing Procedures

(a) Email Address. E-Filing of all documents into the Committee's official record of proceedings shall be performed primarily by email sent to DHCDHousingAppealsCommittee@mass.gov. All documents E-Filed shall be accompanied by a cover letter, which, in all cases, shall be E-Filed by email. In instances in which documents to be filed are oversized, or where otherwise required, Participants shall E-File the cover letter by email and simultaneously E-File the cover letter and all oversized or required documents by SharePoint pursuant to Rule 10(b).

The Committee will receive electronic filings 24 hours per day. Informal email communications with the Clerk or the Presiding Officer shall be made separately to their email addresses,

consistent with the requirements of 760 CMR 56.06(3) regarding *ex parte* communications. In the ordinary course, these email communications are not part of the official case record, unless so ordered by the Presiding Officer.

(b) Notification of Receipt of Filing. Whenever a Participant submits a document to the Committee by email to DHCDHousingAppealsCommittee@mass.gov, the E-Filing System will send an automatic reply acknowledging receipt of the email submitted.

(c) Determination of Date of Filing.

(1) Date of Filing. Any document received by the Committee through the E-Filing System by 11:59 P.M. on a business day shall be deemed filed on that date. A document received by the Committee on a Saturday, Sunday, or legal holiday shall be considered filed the next business day.

(2) Commencement of Case. The date of filing provided in Rule 4(c)(1) shall constitute the date of filing of any Initial Pleading when determining the commencement of a case before the Committee, unless the filing is made earlier by Paper Method, as provided in these E-Filing Rules.

(d) Clerk's Review of Electronically Filed Documents. The Clerk shall review each document received through the E-Filing System for conformance with Rules 9 and 10. If a filing fails to conform to Rules 9 and 10, the Clerk will notify the Participant of the reason(s) for the nonconformance. The Clerk may identify any nonconforming errors in a filed document to be corrected and may state a deadline for the party to resubmit the document in a conforming format. This rule shall not alter the date filed for any document filed electronically. Corrected documents shall be considered filed with the Committee at the time they were received by the Committee. *See* Rule 4(c)1.

Rule 5. Electronic Filing and Service of Initial Pleadings

(a) Filing of Initial Pleadings. Initial Pleadings shall be submitted for filing through the E-Filing System. Required filing fees shall be submitted by Paper Filing at the same time. The Initial Pleading E-Filing shall indicate the amount of the filing fee paid by Paper Filing, but shall not include a photocopy of the filing fee check. Motions to waive fees shall be submitted through the E-Filing System. If an Initial Pleading is too large for E-Filing by email, the Participant filing the Initial Pleading shall contact the Clerk for access to a SharePoint folder to which to upload the Initial Pleading.

(b) Committee Action upon Acceptance of Initial Pleading. Upon acceptance of an Initial Pleading for filing, a case number will be assigned and the document will be processed.

(c) Service of Initial Pleadings. Service of the Initial Pleading on the opposing party by the appellant is not required as the Clerk will transmit a copy of the Initial Pleading to the applicable party. *See* 760 CMR 56.06(4)(b). The Clerk's transmittal of an Initial Pleading may be made by E-Filing or by Paper Method consistent with 760 CMR 56.06(6).

Rule 6. Electronic Filing and Service of Pre-Filed Testimony and Hearing Exhibits

(a) Filing of Pre-Filed Testimony and Hearing Exhibits. All pre-filed testimony and Hearing Exhibits to be admitted into evidence shall be filed as individual documents by SharePoint accompanied by a cover letter listing all documents filed therewith. *See* Rule 10(b). The cover letter shall also be E-Filed simultaneously by email sent to DHCDHousingAppealsCommittee@mass.gov pursuant to Rule 4(a). Exhibits appended to and included as part of pre-filed testimony shall be considered a part of that pre-filed testimony and not separately filed as exhibits. While portions of municipal, state or federal statutes, regulations or guidelines may be appended to pre-filed testimony, complete sets of the foregoing shall be filed as separate Hearing Exhibits.

(b) Hearing Exhibit List. Hearing exhibits E-Filed shall be filed with an exhibit list, which shall be a separate document filed both by SharePoint and by email sent to DHCDHousingAppealsCommittee@mass.gov pursuant to Rule 4(a). Each Hearing Exhibit shall be E-Filed by SharePoint as a separate document.

(c) Identification of Hearing Exhibits. All agreed upon Hearing Exhibits shall be numbered consecutively, with no separate designation with regard to the party proffering the exhibit. They shall be identified when E-Filed according to the following convention, consistent with any applicable Pre-Hearing Order as “Exh. ## – [Docket No.] – [Document Name].” For example:

Exh. 01 – 2020-20 – Board Decision
Exh. 02 – 2020-20 – Project eligibility letter dated 12/2/2020

(d) Identification of Pre-Filed Testimony. All pre-filed testimony shall be given exhibit numbers in sequence, with both direct and rebuttal testimony of a witness numbered sequentially according to the following convention. For example:

Exh. 26 – 2020-20 – John Baker PFD
Exh. 27 – 2020-20 – John Baker PFR

Exhibits referenced in pre-filed testimony, if already identified as Hearing Exhibits, shall not be attached to pre-filed testimony. Exhibits prepared or submitted by the witness proffering the pre-filed testimony shall be appended to the pre-filed testimony, and referred to in that testimony in alphabetical sequence.

(e) Identification of Contested Exhibits. All contested Hearing Exhibits shall be identified numbered sequentially in sequence after the last numbered agreed exhibit according to the following convention.

Proposed Exh. 28 – [Docket No.] – Smith Engineering Peer Review Letter dated 12/3/20

Rule 7. Service of Electronically Filed Documents

(a) All Documents E-Filed must be Served. Except as otherwise provided in the 760 CMR 56.00, *et seq.*, applicable Standing Orders, and Rule 5(c), or as otherwise ordered by the Committee, all

electronically filed documents must be served on all other parties and persons who have a current appearance in a case. Any document filed with the Committee, whether through the E-Filing System or by Paper Filing, must include a certificate of service, which shall state whether service was by email, email and SharePoint, or Paper Method. Subject to the Committee's specific requirement, the certificate of service may appear as a part of the document being filed or may be filed as a separate document.

(b) Electronic Service accomplished through E-Filing; Paper Method Service required by and for Non-Participants for whom no Email Address is Available. All Participants in a case may be served electronically through the E-Filing System, even when the parties to a case comprise both Participants and Non-Participants. Except with respect to Initial Pleadings, when persons appearing in a case comprise both Participants and Non-Participants, the Participant filing the document through the E-Filing System is responsible for serving a copy of the document to all Participants by E-Filing and to Non-Participants by Paper Method.

(c) Calculation of Time to Respond. For the purpose of computing time to respond to documents electronically filed, whenever a Participant has the right or is required to do some act within a prescribed period after the completion of electronic service of a notice or other document upon them and either the notice or document is served upon them by electronic means, or the document was filed electronically and served by Paper Method, three days shall be added from the date of filing electronically to the prescribed period established in 760 CMR 56.00, *et seq.* Response times for documents filed only by Paper Filing are subject to the time frames in 760 CMR 56.00, *et seq.*

Rule 8. Payment of Filing Fees

Required Filing Fee Payments. All applicable filing fees, consistent with 760 CMR 56.06(4)(f) and applicable Standing Orders, are due and payable by Paper Filing at the time of E-Filing of an Initial Pleading.

Rule 9. Format and Content of E-Filed Documents

(a) Documents shall be Filed in Searchable PDF. Except where specifically provided, all documents submitted for E-Filing must be a searchable PDF. Documents should be submitted as electronically converted PDFs rather than scanned PDFs whenever possible. If searchable PDF format is not possible for Pleadings, they shall be submitted in both PDF and Word or Rich Text Format (RTF). Scanned PDFs shall be made searchable using optical-character-recognition software, such as Adobe Acrobat, whenever possible. If compliance with these formatting requirements is not possible, the filing shall include an explanation of the reasons therefor. Documents shall not be locked or otherwise password protected.

(b) Internal Links Only are Allowed. Each document submitted for E-Filing may contain electronic links, but only to navigate within the same document.

(c) Paper Filing Required. The Committee or Presiding Officer may identify documents that must be filed by Paper Filing only or in addition to by E-Filing.

(d) Document Identification. All filings shall consist of a cover letter and other documents, if they are to be filed. Each Pleading or Hearing Exhibit shall be a separate electronic document with a unique identification. Documents or other papers attached to a Pleading as exhibits thereto or otherwise ordinarily shall be a part of the Pleading to which they are attached. Parties may

separately file and identify a particularly large attachment, such as a comprehensive permit application, but normally the attached papers are not to be identified separately from the Pleading to which they are attached. Hearing Exhibits E-Filed shall be filed with an Exhibit List. Each Hearing Exhibit shall be a separate document, as provided in Rule 6(a).

The electronic files of all separate documents filed with the Committee shall include, at a minimum, the document name, docket number, and name of party submitting the document. For example:

Motion to Dismiss (2020-10) Town ZBA.

Each Pleading shall contain the name, address, email address, BBO number, if applicable, and name of the Participant and their represented party or person, if applicable.

Rule 10. File Size Limitations and Legibility

(a) File Size Limitations. The maximum size for each E-Filing by email, is 25 megabytes (MB). A Participant E-Filing either oversized documents or a filing that would require multiple emails shall email to DHCDHousingAppealsCommittee@mass.gov a cover letter identifying all documents in the filing and shall E-File by SharePoint the cover letter and all documents to be filed, as provided in Rule 10(b).

(b) Submission of Oversized Documents. Documents larger than the maximum allowed file size shall be submitted for E-Filing by SharePoint. The Clerk will notify all Participants of the case-specific SharePoint URL at which documents can be uploaded and viewed by all persons designated to have access to SharePoint pursuant to Rule 3. A cover letter shall be E-Filed by email simultaneously pursuant to Rule 4(a). All Participants will have access to view, but not modify, documents uploaded to SharePoint. A Participant seeking to file an Initial Pleading shall contact the Clerk for access to a SharePoint folder to which to upload the Initial Pleading. *See* Rule 6(a).

(c) Scan Settings for Text Documents. To minimize file size, except as specified in Rule 10(d), Participants must configure their scanners to scan text documents at 200 dpi and in black and white rather than in color.

(d) Color and High-Resolution Images. For documents that consist of images beyond text, such documents shall be scanned at sufficient resolution to ensure a legible and accurate representation of the image. Black and white images should be scanned in grayscale. Images should only be scanned in color if color is relevant, such as color photographs used as an exhibit.

(e) Document Legibility and Orientation. A PDF produced under these rules must be of high quality sufficient to ensure a legible and accurate reading of the entire document, including proper orientation of scanned documents.

Rule 11. Filing of Personal Identifying or Confidential Information

No personal identifying or confidential information may be filed unless pursuant to leave granted by the Presiding Officer.

Rule 12. Protection of Personal Identifying and Confidential Information

Subject to an order of the Presiding Officer or Committee establishing confidentiality protection for personal identifying information, publicly accessible documents filed with the Committee

shall conform to Supreme Judicial Court Rule 1:24, *Protection of Personal Identifying Information in Publicly Accessible Court Documents*. A Participant is responsible for redacting personal identifying information. See S.J.C. Rule 1:24, § 7.

Rule 13. Electronic Signature

(a) Attorneys. An attorney's use of the E-Filing System to file documents shall serve as the attorney's signature under 760 CMR 56.00, *et seq.* and applicable Standing Orders. In addition, all documents submitted for E-Filing must include either a scan of the individual's handwritten signature, an electronically inserted image intended to substitute for a signature, or an "/s/ name of signatory" block, which shall have the same validity and effect as a handwritten signature, and must set forth the attorney's name, Board of Bar Overseers number, address, telephone number, and email address.

When using the "s" option, the name of the Participant must be preceded by an "/s/" and typed in the space where the signature would otherwise appear. For example:

/s/ Mary A. Smith
 Mary A. Smith
 BBO#123456
 123 Main Street
 Boston, MA 02210 617-123-4567 masmith@internetprovider.com

(b) Self-Represented Participants. All documents submitted for E-Filing must include either a scan of the individual's handwritten signature, an electronically inserted image intended to substitute for a signature, or an "/s/ name of signatory" block, which shall have the same validity and effect as a handwritten signature, and must set forth the individual's name, address, telephone number and email address. When using the "s" option, the "/s/" must be typed in the space where the signature would otherwise appear. For example:

/s/ John B. Doe
 John B. Doe
 123 Main Street
 Boston, MA 02210 617-123-4567 johnbdoe@isp.com

(c) Multiple Signatories. A Participant who submits a document for E-Filing that bears more than one signature (*e.g.*, stipulations, joint motions, joint pre-hearing orders, joint status reports, etc.) must ensure that all signatures comply with Rule 13(a) and (b).

Rule 14. Orders, Rulings, and Decisions

(a) Orders, Rulings, and Decisions may be Electronically Signed. The Presiding Officer, Committee members, and Clerk may electronically sign all orders, rulings, decisions, and notifications.

(b) Electronic Signatures shall have the Force of Conventional Signatures. Any order, ruling or decision signed electronically has the same force and effect as if the Presiding Officer or Committee member had affixed their signature to a paper copy of the order, ruling or decision.

(c) Notification of Committee Action. All Participants and Non-Participants of record in the case will receive notification of orders, rulings, decisions, and other Committee actions electronically,

and may also, at the discretion of the Presiding Officer, receive notification by Paper Method pursuant to 760 CMR 56.06(6).

Rule 15. Technological Failures and Timeliness of Filing

(a) Technological Failure of Committee's Email Server may Excuse Untimely Filing. A Participant whose filing is made untimely as a result of a technological failure of the Committee's email server may seek appropriate relief from the Committee.

(b) Participant Error will not Excuse Untimely Filing. Problems on the Participant's end, *e.g.*, problems with the Participant's Internet Service Provider (ISP), hardware, or software, will not constitute a technological failure under these E-Filing Rules nor excuse an untimely filing. Paper Filing and service of documents may be made in this circumstance, but must be supplemented by electronic filing promptly once the technological failure is resolved.

Rule 16. Title

These rules may be known and cited as the Housing Appeals Committee E-Filing Rules.