

## INFORMATION ON STAYS

The initiation of an appeal for an Order issued by a Safety Codes Officer does not stay the action required to be taken in that Order. Therefore, in accordance with the Safety Codes Act and the Safety Codes Council's Bylaws, a written request, along with reasons to support the granting of the stay, shall be received by the Safety Codes Council to process a stay of Order pending the outcome of an appeal.

### I. Roles and Responsibilities

1. Administrator:
  - a) reviews the documents provided by the party requesting the stay;
  - b) reviews the Order with the Safety Codes Officer or authority having jurisdiction;
  - c) reviews the request against the three-part test detailed below and documents their rationale on whether the request for a stay meets the three-part test; and
  - d) provides their advice to the Chair of the appropriate Sub-Council and the Coordinator of Appeals.
  
2. The Chair:
  - a) reviews and considers the advice of the Administrator;
  - b) reviews the request against the three-part test detailed below;
  - c) makes a decision on whether to grant the stay or not; and
  - d) informs the Coordinator of Appeals of the decision.
  
3. The Coordinator of Appeals:
  - a) receives, reviews, and processes the request;
  - b) forwards all relevant information to the Administrator and the Chair for review; and
  - c) prepares and sends the notice of the decision to all parties involved in the appeal.

### II. Three-Part Test

The following is the three-part test to be used by the Administrator and Chair:

1. Seriousness

The party that is requesting the stay must establish that the pending appeal involves a serious issue. This is a low threshold and does not involve a predetermination of the issues of the appeal or whether there is agreement with the request for appeal. Consideration of the request must only determine whether the issues involved are not frivolous or vexatious.
  
2. Irreparable Harm

The party that is requesting the stay must establish that they will suffer irreparable harm if the stay is not granted. For example, in the case of financial harm, the harm will be considered irreparable if the losses incurred cannot be recovered if that party is ultimately successful.

3. Balance of Convenience

The consideration of the request must balance convenience versus public safety. The interests of the public and the public's safety must be balanced against the harm that would be suffered by the party requesting the stay. The ultimate decision on whether to grant the stay will depend on the evaluation of the particular circumstances and degree of risk to the public's safety in each case.

### III. References

The following is an excerpt of Section 54 of the [Safety Codes Act](#), that applies to stays:

- (1) *An appeal taken under section 50 or 51 does not operate as a stay of the order, suspension or cancellation appealed from unless a person who may chair the Council, on receipt of a written application, so directs.*
- (2) *An appeal taken under section 53 does not operate as a stay of the order of the Council unless a judge of the Court of Queen's Bench so directs.*
- (3) *A stay directed under this section may include terms and conditions and shall be in writing.*

The following are excerpts from the [Council Bylaws](#), that applies to stays:

- 9.1. *The Bylaws apply to the Council's appeal process, which includes an appeal and request for a stay pending appeal, made to the Council under Part 5 of the Act.*
- 9.3.1 *The Coordinator of Appeals shall:*
  - a) *coordinate, manage, and facilitate the review of orders, the appeal process, requests for a stay pending appeal, and make decisions on applications to adjourn or postpone a hearing in advance of a scheduled hearing;*

...
- 9.5.1 *A written request for a stay pending appeal shall be made to the Council by the person, or their representative, on whom the order or written notice was served and will be processed by the Coordinator of Appeals as set out in Section 54 of the Act.*
- 9.5.2 *Upon receiving a written request, the chair of the appropriate Sub-Council may direct that an order be stayed.*
- 9.6.1 *If a request for a stay pending appeal has been received, an appeal hearing will not be scheduled until that request has been considered and is complete.*