

## **FOOTHILLS MASTERS SWIM CLUB APPEAL POLICY**

### **Definitions**

1. These terms will have these meanings in this policy:
  - a) “*Appellant*”- The party appealing a decision.
  - b) “*Club*” – Foothills Masters Swim Club (“FMSC”)
  - c) “*Club Member*”- All categories of membership defined in the Club Bylaws, as well as all individuals employed by or engaged in activities with the Club, including but not limited to, directors, officers, committee members, swimmers, coaches, officials, referees, volunteers, and administrators.
  - d) “*Days*” - Days irrespective of weekends or holidays.
  - e) “*Respondent*” - The body whose decision is being appealed.
  - f) “*Board*” – The Board of Directors of the Club, as defined in the Club Bylaws.
  - g) “*Executive Committee*” – The Executive Committee of the Club, as defined in the Club’s Bylaws.

### **Purpose**

2. The purpose of this Policy is to enable disputes with Club Members to be dealt with fairly, expeditiously and affordably, within the Club and without recourse to external legal procedures.

### **Scope and Application of this Policy**

3. Any Club Member will have the right to appeal a decision of the Club Board of Directors, Executive Committee, or any body or individual who has been delegated authority to make decisions on behalf of the Club, provided there are sufficient grounds for the appeal as set out in Section 8 of this Policy subject to the limits in Section 6 and 10 of this Policy.
4. This Policy will apply to decisions made by the Club relating to eligibility or discipline.
5. This Policy will not apply to decisions relating to:
  - a) The rules of masters swimming or disputes over competition rules;
  - b) Policies and procedures established by entities other than the Club;
  - c) Issues of operational structure, staffing, employment or volunteer opportunities;
  - d) Commercial matters;
  - e) Issues of budgeting and budget implementation;
  - f) Discipline matters and decisions arising during events organized by entities other than the Club, which are dealt with pursuant to the policies of these other entities;
  - g) Disputes arising within competitions which have their own appeal procedures; and
  - h) Any decisions made under Sections 6 and 9 of this Policy.

### **Timing of Appeal**

6. Club Members who wish to appeal a decision will have fourteen (14) days from the date on which they received notice of the decision, to submit in writing to the head office of the Club the following:
  - a) Notice of their intention to appeal;
  - b) Contact information of the Appellant;
  - c) Name of the Respondent;
  - d) Grounds for the appeal;
  - e) Detailed reason(s) for the appeal;
  - f) All evidence that supports the reasons and grounds for an appeal;
  - g) The remedy or remedies requested, and
  - h) A payment of two hundred fifty dollars (\$250), which is non-refundable.

7. Any party wishing to initiate an appeal beyond the fourteen (14) day period must provide a written request stating reasons for an exemption to the requirement of Section 6. The decision to allow, or not to allow an appeal outside the 14-day period will be at the sole discretion of the Case Manager appointed by the Club, in accordance with this policy, and may not be appealed.

### **Grounds for Appeal**

8. Not every decision may be appealed. Decisions may only be appealed, and appeals may only be heard, on procedural grounds. Procedural grounds are strictly limited to the Respondent:
  - a) Making a decision for which it did not have authority or jurisdiction as set out in the Respondent's governing documents;
  - b) Failing to follow procedures as laid out in the bylaws or approved policies of the Club;
  - c) Making a decision that was influenced by bias, where bias is defined as a lack of neutrality to such an extent that the decision-maker is unable to consider other views or that the decision was influenced by factors unrelated to the substance or merits of the decision; and/or
  - d) Making a decision that was grossly unreasonable.
9. The Appellant will bear the onus of proof in the appeal, and thus must be able to demonstrate, on a balance of probabilities, that the Respondent has made an error as described in Section 8.

### **Case Manager**

10. The Board will appoint a Case Manager to oversee the management and administration of appeals submitted in accordance with this Policy. The Case Manager is not required to be a member of the Club. The Case Manager has an overall responsibility to ensure procedural fairness is respected at all times in this Policy, and to implement this Policy in a timely manner. More specifically, the Case Manager has a responsibility to:
  - a) Determine if appeals lie within the jurisdiction of this Policy;
  - b) Determine if appeals are brought in a timely manner;
  - c) Determine if appeals are brought on permissible grounds;
  - d) Appoint the Panel to hear appeals;
  - e) Determine the format of the appeal hearing;
  - f) Coordinate all administrative and procedural aspects of the appeal;
  - g) Provide administrative assistance and logistical support to the Panel as required; and
  - h) Provide any other service or support that may be necessary to ensure a fair and timely appeal proceeding.

### **Screening of Appeal**

11. Upon receipt of the notice and grounds of an appeal and the required fee, the Case Manager will review the appeal and will decide whether or not there are sufficient grounds for an appeal. If the Case Manager is satisfied that there are not sufficient grounds for an appeal, the parties will be notified in writing, stating reasons. If the Case Manager is satisfied that there are sufficient grounds for an appeal, then a hearing will take place. This decision is at the sole discretion of the Case Manager and may not be appealed.

### **Appeals Panel**

12. If the Case Manager is satisfied that there are sufficient grounds for an appeal, the Case Manager will establish an Appeals Panel (the "Panel") consisting of a single Adjudicator to hear the appeal. In extraordinary circumstances, and at the discretion of the Case Manager, a Panel of three persons may be appointed to hear and decide an appeal and in this event, the Case Manager will appoint one of the Panel's members to serve as the Chair.

### **Procedure for the Hearing**

13. The Case Manager will determine the format of the hearing, which may involve an oral hearing in person, an oral hearing by telephone, a hearing based on written submissions or a combination of these methods. The hearing will be governed by the procedures that the Case Manager and the Panel deem appropriate in the circumstances, provided that:

- a) The hearing will be held within the appropriate timeline determined by the Case Manager.
- b) The Parties will be given reasonable notice of the day, time and place of the hearing.
- c) Copies of any written documents which the Parties wish to have the Panel consider will be provided to all Parties in advance of the hearing in accordance with the appropriate timeline.
- d) Both Parties may be accompanied by a representative or adviser, including legal counsel.
- e) The Panel may request that any other individual participate and give evidence at the hearing.
- f) If a decision in the appeal may affect another party to the extent that the other party would have recourse to an appeal in their own right under this Policy, that party will become a party to the appeal in question and will be bound by its outcome.
- g) The hearing will be conducted in the official language of choice of the Appellant.
- h) In the situation where the hearing is conducted by a Panel consisting of three persons, a quorum will be all three and decisions will be by majority vote.

### **Appeal Decision**

14. Within fourteen (14) days of concluding the appeal, the Panel will issue its written decision, with reasons. In making its decision, the Panel will have no greater authority than that of the original decision-maker. The Panel may decide to:

- a) Reject the appeal and confirm the decision being appealed; or
- b) Uphold the appeal and refer the matter back to the initial decision-maker for a new decision; or
- c) To uphold the appeal and vary the decision but only where it is found that an error occurred and such an error cannot be corrected by the original decision-maker for reason of lack of clear procedures, lack of time, or lack of neutrality.

15. The decision will be considered a matter of public record. A copy of this decision will be provided to the Parties and to the Club. Where time is of the essence, the Panel may issue a verbal decision or a summary written decision, with reasons to follow, provided the written decision with reasons is rendered within the appropriate timelines.

### **Confidentiality**

16. The appeal process is confidential involving only the parties, the Case Manager and the Panel. Once initiated and until a written decision is released, none of the parties or the Panel will disclose confidential information relating to the appeal to any person not involved in the proceedings.

### **Final and Binding Decision**

17. The decision of the Panel will be binding on the parties and on all Club Members, subject only to the Club's Dispute Resolution Policy.

18. No action or legal proceeding will be commenced against the Club or its members in respect of a dispute, unless the Club has refused or failed to abide by the provisions for appeal resolution as set out in the Club policies.