



Office of the City Clerk

Community Standards and Licence Appeal Committee

Procedural Manual

TABLE OF CONTENTS

PREFACE	4
SECTION 1 - THE COMMITTEE AND ITS POWERS	5
A. THE COMMITTEE.....	5
I. Appointment of the Committee	5
II. Composition of the Committee.....	6
III. Names of Committee Members	6
B. POWERS	6
I. Absence from Hearing	6
II. Dismissal of Appeal	7
III. Finding of Merit	7
IV. Costs	7
V. Request for Postponement	7
SECTION 2 - PRINCIPLES OF NATURAL JUSTICE	8
A. THE RIGHT TO BE HEARD.....	8
B. BIAS	8
SECTION 3 - THE NATURE AND CONDUCT OF A COMMITTEE HEARING	9
A. THE HEARING.....	9
I. Parties	9
II. Proceeding Before the Committee.....	10
III. Representation at Hearing.....	10
IV. Non-Attendance by Appellant, Respondent or Administration	10
V. Public Access	10
VI. Media Protocol.....	11
VII. Witnesses	11
VIII. Interpreter	11
IX. Hearing “de novo”	12
X. Review of Orders	12
B. HEARING FORMAT	12
I. Licensing Hearings	12
II. Section 547/Weed Control Act Hearings:	13
C. TIME FOR PRESENTATIONS.....	14
I. Licensing Hearings	14
II. Section 547/Weed Control Act Hearings:	14
D. EVIDENCE	15
I. Authority.....	15
II. Definition.....	15

III.	Admissibility	16
IV.	Oath	17
V.	Submission	17
VI.	Protection from Giving Evidence.....	18
SECTION 4 - POSTPONEMENTS.....		19
A.	COMPELLING REASONS.....	19
B.	NON-COMPELLING REASONS	19
C.	FACTORS COMMITTEE MAY CONSIDER IN DETERMINING A REQUEST FOR POSTPONEMENT	20
D.	PROCEDURE.....	20
SECTION 5 – SERVICE AND FILING		21
A.	SERVICE OF DOCUMENTS.....	21
B.	NOTICE OF HEARING.....	22
SECTION 6 – COMMITTEE DECISION AND APPEAL		22
A.	MAJORITY RULES	22
B.	ORAL AND WRITTEN.....	23
APPENDIX.....		24
DEFINITION OF TERMS RELATING TO EVIDENCE		24

PREFACE

The Procedural Manual is developed primarily for the use of members of the Community Standards and Licence Appeal Committee (Committee). The Manual also provides people appearing before the Committee insights into what to expect. If there is a conflict between the manual and the bylaw, the Community Standards and Licence Appeal Committee Bylaw 15166 will prevail. The provisions within this manual are intended to be directory and not mandatory.

Members are appointed to the Committee by the Council of the City of Edmonton.

The purpose of this Manual is to deal with administrative and legal matters that affect the hearing process.

SECTION 1 - THE COMMITTEE AND ITS POWERS

The Committee means the Community Standards and Licence Appeal Committee as the context requires.

A. THE COMMITTEE

1. Although Committee membership is the same membership as the Community Services Committee of City Council, all Councillors are ex-officio Members of the Committee. The circumstances under which Members of the Committee are appointed are legislated in City of Edmonton Bylaw 15166, being the Community Standards and Licence Appeal Committee Bylaw.
2. The purpose of the Committee is to hold administrative hearings to deal with reviews and appeals from decisions of certain City administrators.

I. Appointment of the Committee

3. (1) The Committee is established by City of Edmonton *Community Standards and Licence Appeal Committee Bylaw 15166*. The Committee is established to hear appeals from
 - a) the refusal, revocation, suspension of or imposition of conditions on a business licence or any licence pursuant to the following bylaws:
 - (1) Business Licence Bylaw 13138
 - (2) Escort Licensing Bylaw 12452
 - (3) Exotic Entertainers Bylaw 10398
 - (4) Massage Practitioners Bylaw 10396
 - (5) Vehicle for Hire Bylaw 14700
 - b) orders issued pursuant to Section 545 of the *Municipal Government Act (Act)* regarding contraventions of other bylaws or enactments that the City is authorized to enforce;
 - c) orders issued pursuant to Section 546 of the *Act*; and;

- d) Notices issued under the provincial *Weed Control Act*.

II. Composition of the Committee

- 4. The Committee will be comprised of the same Members of Council as the Community Services Committee of Council. Only Members of the Committee may attend a meeting. Quorum of a Committee Meeting will be three Members. All Members of Council are *ex-officio* Committee Members. If quorum is not possible because of the absence of one or more Members of the Committee, members will be added to achieve quorum, firstly by asking Members of Council who most recently served on the Committee and secondly using the Deputy Mayor roster beginning with the current Deputy Mayor.

III. Names of Committee Members

- 5. Names of scheduled Committee Members are not released prior to the hearing.

B. POWERS

- 6. The powers and jurisdiction of the Committee are legislated in the *Community Standards and Licence Appeal Committee Bylaw 15166* and the *Municipal Government Act* and other City of Edmonton bylaws.

I. Absence from Hearing

- 7. If a party does not attend at a hearing the Committee may, upon confirming that the party was given notice of the hearing, proceed to determine the matter in the absence of the party.

II. Dismissal of Appeal

8. After calling the hearing to order and confirming the Appellant received notice of the hearing, the Committee may:
 - a) if the Appellant fails to appear, or fails to submit any material, dismiss the appeal; or
 - b) if the Appellant appears and the hearing proceeds, dismiss the appeal if Committee finds it is without merit.

III. Finding of Merit

9. The Committee may, if it finds the appeal has merit in whole or in part, order the entity against whom the finding is made, to do any or all of the following:
 - a) direct that a licence be issued;
 - b) direct that the revoked licence be reinstated;
 - c) remove or vary the suspension;
 - d) remove, impose or vary conditions on a licence and licensee; or
 - e) uphold, cancel or vary an order issued under Sections 545 or 546 of the *Municipal Government Act*; or of the *Provincial Weed Control Act*.

IV. Costs

10. The Committee may not make any order as to costs.

V. Request for Postponement

11. The Committee considers requests to postpone hearings. The Appellant and Respondent will each be given five minutes to speak to the request for postponement. The Committee may hear from interested parties regarding the request for postponement.

SECTION 2 - PRINCIPLES OF NATURAL JUSTICE

The principles of natural justice include the right to be heard and the rule against bias.

A. THE RIGHT TO BE HEARD

12. Procedurally the right to be heard may include many things. However, the fundamental question is always, "has the affected individual or party been given an adequate opportunity to present his case and to know the case against him or her?" The right to be heard includes notice, a fair hearing, the right to counsel, the right to disclosure of evidence, the right to witnesses, the right to present relevant evidence, the right to reasonable postponements, and reasons for decision.

B. BIAS

13. The rule against bias provides that the person appealing is entitled to have an independent or impartial decision-maker decide the case. The right to a fair hearing requires that the decision-maker not have pre-conceived notions about how a case will be decided and not have a personal interest in the outcome of the case.
14. The following circumstances have been held to give rise to a reasonable apprehension of bias on the part of the decision-maker:
 - a) family relationship or close personal friendship with a party or a witness;
 - b) business relationship with a party or a witness;
 - c) history of animosity toward a party or the party's family;
 - d) making statements during proceedings indicating unreasonable hostility towards a party, counsel or the case;
 - e) a pecuniary interest in the outcome of the case (direct or indirect);
 - f) expression of views reflecting a predisposition to decide a specific case a certain way.

SECTION 3 - THE NATURE AND CONDUCT OF A COMMITTEE HEARING

A. THE HEARING

15. In a Committee hearing, all parties have an opportunity to present their case and their evidence. The hearing, however, is not a trial and rules of evidence do not apply.
16. Cross-examination of witnesses is not allowed. Committee Members may ask questions of any party or witness.
17. The burden of proof rests with the appellant. The burden of proof for the Committee hearing is the civil standard which requires the party bearing the burden of proof to establish a case “on a balance of probabilities.” This means that if the Committee can say, “we think it more probable than not,” the burden is discharged, but if the probabilities are equal, it is not.
18. The Committee may vote to go in private for matters such as deliberations or legal advice.

I. Parties

19. Licensing hearing parties usually are:
 - a) the appellant;
 - b) the Administration of the City of Edmonton; and
 - c) the respondent, which is often a representative of the Public Safety Compliance Team.
20. *Municipal Government Act* Section 545 and 546 and *Weed Control Act* appeal hearing parties are:
 - a) the appellant;
 - b) the respondent, being the City of Edmonton.
21. Other people may be in attendance at the hearing such as an interested party, interpreter, expert witness or other witnesses.

II. Proceeding Before the Committee

22. The appellant has the responsibility to proceed before the Committee. This means the appellant is obligated to proceed with his or her appeal and if he or she fails to do so, the appeal may be dismissed.

III. Representation at Hearing

23. The parties to a hearing before the Committee are entitled to appear and be represented by counsel.
24. In addition to being represented by counsel, the parties to a hearing are entitled to appear in person or by an authorized agent.

IV. Non-Attendance by Appellant, Respondent or Administration

25. The Committee, on receiving evidence of proper service of the hearing notice, may proceed with the hearing in the absence of any party and decide the matter in the same manner as though the appellant, respondent or Administration were in attendance.

V. Public Access

26. A hearing before the Committee will be open to the public unless, on the application of any party, the Committee, pursuant to section 197 of the *Municipal Government Act* decides that it would be advisable to hold the hearing in private.

VI. Media Protocol

27. Media are entitled to attend Committee hearings and to sit in the public seating area. Interviewing of the parties will not be done in the hearing room. Members of Council should not comment on a matter under appeal.

VII. Witnesses

28. Witnesses before the Committee may be asked questions by Members of the Committee.

VIII. Interpreter

29. The appellant should have an interpreter if he or she does not understand or speak English. Hearing Assistive devices, real time captioning, or American Sign Language interpreters will be provided for deaf or hard of hearing individuals provided that at least three weeks' notice is given to the Office of the City Clerk. The appellant may provide an interpreter if he or she so desires.
30. The Committee may require the interpreter to make a solemn affirmation to interpret accurately any statement made during the hearing and to translate accurately any relevant documents.

IX. Hearing “de novo”

31. A licensing appeal before the Committee is a hearing de novo. “De novo” is a Latin term which means anew or starting again. For Licensing hearings, both the appellant and the respondent are able to provide new information to supplement the record by calling more witnesses or any other additional evidence that may be relevant to the case as long as reasonable notice is given to the opposing party.

X. Review of Orders

32. Section 545 and 546 hearings, and *Weed Control Act* hearings, are reviews of orders issued by Administration. Evidence may be introduced and interested parties may request to speak on the day of the hearing.

B. HEARING FORMAT

33. Hearings normally follow a certain format. The Chair may:
- a) introduce the Committee and identify all persons present;
 - b) deal with public access and observers;
 - c) describe the hearing process which may include:
 - the order of presentation
 - anticipated length of hearing
 - recesses and breaks
 - legislative authority
 - the decision
 - d) deal with any preliminary matters.

I. Licensing Hearings

34. Normally, the order evidence is presented by parties in attendance at a licensing appeal will be as follows:

- a) At any time the Committee may request clarification of the record from City Administration.
- b) Questions to City Administration by Committee Members;
- c) Presentation by appellant;
- d) Questions to the appellant by Committee Members
- e) Presentation by interested parties in favour of the appellant;
- f) Questions to interested parties in favour of the appellant by Committee Members;
- g) Presentation by a representative of the respondent;
- h) Questions to the respondent by Committee Members
- i) Presentation by interested parties in favour of the respondent;
- j) Questions to interested parties in favour of the respondent by Committee Members;
- k) Response by appellant to new information;
- l) Response by respondent to new information;
- m) The appellant will be allowed the last word in a hearing if so desired.

II. Section 547/Weed Control Act Hearings:

35. Normally, the order of evidence is presented by parties in attendance at Section 547 or Weed Control Act Hearings will be as follows:
- a) Presentation by the Appellant – up to five minutes;
 - b) Questions to the appellant by Committee Members;
 - c) May vote to allow an interested party in favour of the Appellant's position up to five minutes to speak;
 - d) Questions to interested parties in favour of appellant by Committee Members;
 - e) Presentation by Administration (Respondent) – up to five minutes;
 - f) Questions to Administration by Committee Members;
 - g) May vote to allow an interested party in favour of the Respondent's position up to five minutes to speak;
 - h) Questions to interested parties in favour of Respondent by Committee Members;

- i) Response by appellant to new information;
- j) Questions to the appellant by Committee Members;
- k) Response by Administration to new information;
- l) Questions to the Administration by Committee Members;
- m) The appellant will be allowed the last word in a hearing, if so desired;
- n) The Committee will then make its decision (it can deliberate in private but must vote in public);
- o) The Clerk will mail the written decision with reasons to the address provided by the appellant.

C. TIME FOR PRESENTATIONS

I. Licensing Hearings

36.

- a) Appellant and Respondent each have up to 20 minutes to make their presentation and 20 minutes to respond to new information.
- b) Interested parties have up to five minutes to make their presentation.
- c) Each Committee Member has up to five minutes to ask questions of any party. Committee Members may ask more than one round of questions.
- d) A Committee may, by motion, extend the amount of time given to a presenter.

II. Section 547/Weed Control Act Hearings:

37.

- a) The Appellant has up to five minutes to make his or her presentation.
- b) The Respondent has up to five minutes to make his or her presentation.
- c) Approved interested parties each have up to five minutes to make their presentation.
- d) The Appellant and Respondent each have up to five minutes to respond to new information.

- e) Committee Members each have up to five minutes to ask questions of any party. Committee Members may ask more than one round of questions.
- f) A Committee may, by motion, extend the amount of time given to a presenter.

D. EVIDENCE

I. Authority

- 38. Evidence may be given before the Committee in any manner the Committee considers appropriate, and the Committee is not bound by the rules of law respecting evidence in judicial proceedings.

II. Definition

- 39. Evidence is the materials which are submitted to establish the factual basis against which legal interpretation, policy and logical reasoning will operate.
- 40. Evidence includes all means of proving or disproving any matter, e.g. oral testimony, written records, demonstrations, etc. (see appendix). The term "evidence" does not include arguments on behalf of the parties (sometimes called "submissions" and "representations") which are made to persuade the decision-maker to take a certain view of the evidence.
- 41. The appendix attached to this manual indicates that there are many different types of evidence. The role of the Committee is to consider all types of evidence, to weigh this evidence to determine the facts and to make a decision based on those facts. The Committee has the authority to hear or receive any evidence that it considers helpful.
- 42. The Committee needs to hear evidence that is relevant as this helps the Committee to answer part or all of what it must decide by logically proving one or

more points. In addition, the evidence needs to be reliable as that will help the Committee to determine the value of the evidence or to what degree it can be sure that the evidence truly and accurately depicts or describes the events.

III. Admissibility

43. The Committee, like most administrative tribunals, may accept all kinds of evidence. The Committee is not required to accept and reject evidence based on the formal rules of evidence applicable to a civil or criminal trial.
44. The admissibility of evidence must be distinguished from the “weight” or “probative value” assigned to the evidence. Generally all relevant evidence may be accepted for consideration.
45. The probative value or weight of the evidence refers to how important and reliable the Committee finds evidence to be in coming to a conclusion on an appeal. The Committee may accept or reject evidence even if it is “weak” evidence and can place as much weight on a piece of evidence as the Committee feels appropriate. However, it is often difficult to gauge the relevance and reliability of a particular piece of evidence until all the evidence is heard.
46. Privileged communications are not admissible in evidence unless waived. Privileged communications consist of communications between a lawyer and his or her client.

IV. Oath

47. The Committee may require a person appearing before it or making any claim or submission to it to do so under oath or affirmation.

a) A typical oath is:

Do you swear that the evidence you will give at this hearing will be the truth, the whole truth, and nothing but the truth so help you God?

b) A typical affirmation is:

Do you solemnly affirm that the evidence you will give at this hearing will be the truth, the whole truth, and nothing but the truth?

V. Submission

48. Record - The person who made a licensing decision under appeal must provide six copies of the record to the Office of the City Clerk at least 30 days prior to the scheduled hearing date.

49. All parties, including interested parties, wishing to speak or introduce evidence must submit six copies of argument, evidence, and substance of testimony to be given at the hearing at least 21 days prior to the scheduled hearing date to the Office of the City Clerk as outlined in Section 5 of this Manual. A submission will state the decision which is sought from the Committee and may, in addition, include:

- a) an acknowledgement of any agreed upon facts;
- b) written arguments covering legal points and authorities;
- c) any document or exhibits;
- d) the estimated time that the party needs before the panel, and

- e) any preliminary matters that the party intends to raise, including any questions of jurisdiction.
50. At least ten days prior to the scheduled hearing date all parties, including interested parties, wishing to respond to evidence must submit six copies of argument, evidence or substance of testimony to be given in rebuttal at the hearing.

VI. Protection from Giving Evidence

51. No Member of the Committee will be required by any court to give evidence relative to information obtained for the purposes of the hearing.

SECTION 4 - POSTPONEMENTS

52. The Committee will not postpone a hearing unless there are compelling reasons to do so or to deny a postponement would amount to a denial of natural justice.
53. In exercising its discretion with respect to requests for postponements, the Committee must balance the rights of the appellant and respondent to a fair hearing against the public expectation of efficiency in processing appeals.

A. COMPELLING REASONS

54. Compelling reasons for granting a postponement may include unavailability of the appellant or respondent or their counsel due to:
 - a) A recent death in the immediate family;
 - b) Serious incapacity or illness;
 - c) Court attendance required on a preemptory basis on another matter;
 - d) Unexpected or unavoidable transportation problems (e.g. bad weather);
 - e) Appellant or respondent's counsel retained after the setting of the hearing date and the counsel is not available;
 - f) Unexpected delays in the receipt of relevant documents.

B. NON-COMPELLING REASONS

55. Non-compelling reasons for granting a postponement include:
 - a) Absence from the city of any of the parties and/or their witnesses;
 - b) Scheduling conflicts that have arisen after setting the hearing date;
 - c) Insufficient time to prepare;
 - d) Unavailability of easily obtainable documents.

C. FACTORS COMMITTEE MAY CONSIDER IN DETERMINING A REQUEST FOR POSTPONEMENT

56. Some factors, which are not an inclusive list, are:
- a) Previous requests for postponements;
 - b) When the hearing was scheduled (e.g. 2 months prior to date);
 - c) The number and seriousness of the issues to be decided;
 - d) The co-cooperativeness of the appellant/respondent;
 - e) The number of interested parties;
 - f) The timeliness of the application;
 - g) Whether appellant still retains Licence being appealed.

D. PROCEDURE

57. Requests for postponement must be made before the commencement or continuation of the hearing. The Committee must issue its decision in writing if a request for a postponement is made prior to the hearing date. If the request for postponement is made at the hearing, it should be determined by the Committee as a preliminary matter.

SECTION 5 - SERVICE AND FILING

A. SERVICE OF DOCUMENTS

38. A notice or other document required by the bylaw to be filed with the City is deemed to be properly filed if it is received by the Office of the City Clerk by the times specified in Bylaw.

Address: Main Floor, Churchill Building
10019-103 Avenue
Edmonton, Alberta, T5J 0G9

Phone: 780 - 496-5026
780 - 496-8199

(S.52, Bylaw 15793, November 30, 2012)

39. A notice or other document required by the bylaw to be served on any person is deemed to be properly served if it is:
- a) couriered to the address a person supplies to the City Clerk; or
 - b) sent to the address for that person stated on his or her appeal letter.
40. Where it is necessary to prove filing or service of any notice or document:
- a) if filing or service is effected personally or by courier, the actual date on which it is filed or served is the date of filing or service; or
 - b) if filing or service is effected by mail, filing or service will be conclusively presumed to have been effected on the date of receipt or seven days after the date of mailing, whichever first occurs.

B. NOTICE OF HEARING

61. Licence Hearing Notice

- a) For licensing hearings, City Clerks for the City of Edmonton will, not later than 45 days before the date of the Committee hearing, serve on the parties to the proceeding a notice confirming the date, time and place of the hearing.

Section 547 and Weed Control Act Hearing Notice

- b) For Section 547 and Weed Control Act hearings, a notice confirming the date, time and place of the hearing will be served on the parties as required under the relevant bylaw or Act.

SECTION 6 – COMMITTEE DECISION AND APPEAL

62. A decision of the Committee is the final determination of an appeal. Reasons are the Committee's explanation of why it made the decision it made.
63. When a Committee exercises a statutory power so as to adversely affect the rights of a party, the authority must furnish to each party a written statement of its decision setting out:
 - a) the findings of fact on which it based its decision; and
 - b) the reasons for the decision.

A. MAJORITY RULES

64. The decision of the majority is the decision of the Committee.

B. ORAL AND WRITTEN

65. Decisions may be given orally by the Chair immediately upon conclusion of the hearing or at the conclusion of the hearing the Committee may decide to reserve its decision and to present its decision and reasons in writing.
66. Where oral reasons are delivered, the Committee must provide a written confirmation of its decision.
67. Except as otherwise provided by the Municipal Government Act, the Committee's decision is final and binding and may not be further appealed.

APPENDIX

DEFINITION OF TERMS RELATING TO EVIDENCE

Some of the terms which arise in a discussion of the types of evidence are:

- (1) Oral evidence: Statements made by witnesses at a hearing.
- (2) Documentary evidence: Anything on which things are written or printed. All documents filed with the Committee which are not in English must be accompanied by a certified correct translation, unless the Committee decides otherwise.
- (3) Direct evidence: First-hand accounts of events, evidence of a fact actually perceived by a witness with his or her own sense. This is to be contrasted with hearsay and circumstantial evidence.
- (4) Hearsay evidence: Second-hand accounts of events; what someone says that another person has said, i.e. when the witness is introducing another person's statement as evidence of the truth of that statement.
- (5) Circumstantial evidence: A witness cannot always be found to prove facts from personal observation. The question in issue may then be established by proof of other facts. If sufficient other facts are proved, the court may "from the circumstances" decide the question.
- (6) Indirect evidence: Hearsay or circumstantial evidence, as contrasted with direct evidence.
- (7) Real evidence: Evidence supplied by material objects produced for inspection of the court; also known as "physical evidence."
- (8) Primary evidence of a document: The original or duplicate original document itself.
- (9) Secondary evidence of a document: Evidence of contents of a document, other than the production of the original document.
- (10) Self-serving evidence: Evidence that a witness has created for himself or herself; due to the risk of fabrication, the courts generally do not allow a witness to submit self-serving evidence. For example, a person who writes to a friend

stating that "X" caused the damage cannot normally introduce that letter in court as evidence that "X" did cause the damage.

- (11) Character evidence: A summary of the witness' past actions, good and bad, or reputation in the community. It is natural to tend to judge whether a person is telling the truth now based on whether the person has or has not told the truth in the past or has been convicted of a criminal offence. Care has to be taken, of course, to ensure that a party is not unfairly prejudiced by the character evidence.
- (12) Probative value: Means that which furnishes, establishes, or contributes towards proof. Evidence has "probative value" if it tends to prove an issue. Evidence which is strong in proving a point is said to have "high probative value."
- (13) Relevant evidence: Evidence which tends to make the existence of any fact in issue more probable or less probable than it would be without the evidence.