EDMONTON
TRIBUNALS
Community Standards & Licence Appeal Committee

Community Standards and Licence Appeal Committee

Procedures and Guidelines Manual

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PREFACE

The Procedures and Guidelines 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 19003* 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, procedural and legal matters that affect the hearing process.

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SECTION 1 - THE COMMITTEE AND ITS POWERS

The Committee means the Community Standards and Licence Appeal Committee

A. THE COMMITTEE

The Committee consists of up to ten individuals appointed annually by City Council pursuant to the *Community Standards and Licence Appeal Committee Bylaw* 19003 (the *CSLAC Bylaw)*.

The purpose of the Committee is to hold administrative hearings to deal with reviews and appeals from decisions of certain City of Edmonton administrators.

I. Establishment of the Committee

The Committee is established by the CSLAC Bylaw. 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:

   i. *Animal Licensing and Control Bylaw 13145*
   ii. *Business Licence Bylaw 13138*
   iii. *Vehicle for Hire Bylaw 17400*

b. Orders issued pursuant to Section 545 of the *Municipal Government Act* R.S.A. 2000 Chapter M-26 *(MGA)* regarding contraventions of other bylaws or enactments that the City is authorized to enforce;

c. Orders issued pursuant to Section 546 of the *MGA*;

d. Notices issued under Section 29.2 of the *Community Standards Bylaw 14600* (outdoor fires); and

e. Notices issued under the provincial *Weed Control Act S.A 2008 Chapter W-5.1*.

II. Composition of the Committee

Annually, up to ten members will be appointed as members of the Committee by Edmonton City Council. The maximum panel size for a Committee is three members and quorum for a Committee Meeting is three members. If quorum is not possible because of the absence of one or more scheduled members of the Committee, alternate members will be added based on availability.

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III. Names of Committee Members

The names of scheduled Committee members may be released on the public agenda which is released shortly before the hearing, but shall not be released prior to the public agenda becoming available. Even after the public agenda is issued, the Committee members that sit in a hearing are subject to change.

B. POWERS

The powers and jurisdiction of the Committee are legislated in the *CSLAC Bylaw,* the *MGA* and other City of Edmonton bylaws.

I. Absence from Hearing

If a party does not attend a scheduled 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. If a party that is not in attendance has submitted written material, the Committee may review that written material, and place the appropriate weight on that material, taking into account the fact that there is no way to ask questions about the material submitted.

II. Dismissal of Appeal

There are various situations where the Committee may decide to dismiss an appeal as a result of the appellant failing to present sufficient evidence. 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, and fails to submit any material, dismiss the appeal;

b. if the appellant appears and the hearing proceeds, dismiss the appeal if the appellant fails to produce any evidence; or

c. if the appellant appears and the hearing proceeds, dismiss the appeal if the appellant fails to produce sufficient evidence to convince the Committee that a hearing should proceed.

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III. Decisions of the Committee

The specific powers of the Committee are found in the *CSLAC Bylaw* and the other bylaws under which the Committee operates. The Committee may, in general, make the following decisions:

a. direct that a licence be issued;
b. direct that the cancelled licence be reinstated;
c. remove or vary a suspension of a licence;
d. cancel a licence;
e. remove, impose or vary conditions on a licence and licensee; or
f. Uphold, substitute, cancel or vary an order or notice issued under Sections 545 or 546 of the *Municipal Government Act;* Section 29.2 of the *Community Standards Bylaw;* or the Provincial *Weed Control Act.*

IV. Costs

The Committee may not make any order as to costs except as it relates to the refund of the cost of an appeal relating to a Weed Control or Debt Recovery Notice.

V. Requests for Postponement

The Committee will consider requests to postpone hearings. The appellant and respondent will each be given five minutes to speak to the request for postponement.

The Committee may also hear from interested parties regarding the request for postponement.

If a party submits material in support of a postponement without making a personal appearance, the Committee may consider the material, and either grant or deny the postponement.

If the postponement is denied and the merit hearing is scheduled to begin on the same day, the hearing on the merits of the appeal will proceed whether or not the appellant is present.

Section 6 ***of this Manual provides additional procedures relating to postponement requests.***

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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

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 their case and to know the case against them?" The right to be heard usually includes notice of the hearing and notice of the case against you, a fair hearing, the right to counsel (if desired), the right to disclosure of evidence (where applicable), the right to witnesses, the right to present relevant evidence, the right to reasonable postponements, and reasons for decision. These rights apply to all parties to a proceeding.

B. BIAS

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 does not prejudge the case and does not have a personal interest in the outcome of the case.

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.

While each case of bias must be determined on the arguments presented, the key question will always be whether the Committee member can, with an open mind, consider the evidence on the issue and make a determination based on the evidence. Where a Committee member feels they cannot keep an open mind, or where an objective person would question whether a Committee member can keep an open mind, the Committee member may need to step down and allow another member of the Committee to decide the matter.

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If, after a hearing commences and evidence is heard, it is determined that a member of the Committee must step down for reasons of bias, the hearing will be adjourned to allow a new member to attend the hearing to reach quorum. This will require the hearing to be restarted, and may require three new members to sit. The hearing will usually restart as if it never took place, and be heard on a different date.

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SECTION 3 - COMMITTEE HEARING

A. GENERAL HEARING PROCEDURES

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.

Cross-examination of witnesses is not allowed. However, the Committee members may ask questions of any party or witness to clarify matters or question the evidence.

The burden of proof typically rests with the appellant. In situations where a party has made a specific application (such as a postponement) the burden of proof rests with the applicant. The burden of proof for a 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.

CSLAC administration will be present in the hearing and will assist Committee members with the handling of evidence and will also answer questions about general procedures. CSLAC administration must not attempt to influence the Committee in the decision making process.

The Committee may vote to go in private for matters such as deliberations or legal advice. CSLAC administration may accompany the Committee for its deliberations and answer questions relating to the evidence (administrative or procedural matters) and legal issues that are being presented. CSLAC administration will not express any opinions on the merit of the appeal during deliberations.

I. Parties

The parties to a hearing may differ depending upon the type of appeal that is being heard.

II. Proceeding Before the Committee

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

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III. Representation at Hearing

The parties to a hearing before the Committee are entitled to appear and be represented by counsel (a lawyer).

In addition to being represented by counsel, the parties to a hearing are entitled to appear in person or by an authorized agent. Where a party is represented by an agent, proof of the agency may be required such as a letter of agency, a power of attorney, or such other document which will show the agent has the authority to act on behalf of the party.

IV. Non-Attendance by Appellant, Respondent or Administration

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 CSLAC administration were in attendance.

V. Public Access

A hearing before the Committee will be open to the public unless, either on the application of any party, or at the Committee's own discretion, the Committee, pursuant to section 197 of the *MGA* decides that it would be advisable to hold the hearing in private. Parties may make an application to show why the hearing should take place in private or evidence be sealed.

VI. Recording of Hearings

Hearings of the Committee are typically recorded.

Should any party wish a copy of the recording, they can make a request for a copy of the audio recording. The Committee will attempt to accommodate a party by providing this recording in various forms of electronic media, based on the ability of the Committee and the desire of the party.

Upon receiving a request, the CSLAC administration will prepare the recording, and upon payment of the required fee, make this recording available for pick-up.

VII. Media Protocol

Media are entitled to attend Committee hearings and to sit in the public seating area unless a request has been made and approved to have the hearing heard in private. Interviewing of the parties will not be done in the hearing room.

Members of the Committee or of City Council should not comment on a matter under appeal.

VIII. Witnesses

All witnesses to hearings should sign in with the Clerk of the Committee prior to the hearing. Witnesses before the Committee may be asked questions by Members of the Committee. No party has the right to cross examine any witness, but parties may, during their presentation, suggest questions for the Committee to ask of any witness.

After testifying, the Committee can, if necessary, recall any witness to answer further questions if such procedure is fair to all parties.

Should any interested parties wish to make presentations that are relevant to an appeal, the Committee will vote, as required under the CSLAC Bylaw, to determine whether the presentations will be heard and considered.

IX. Interpreters and Hearing Impaired

A person should bring an interpreter if he or she does not understand or speak English. For other people that are hard of hearing or deaf, the City of Edmonton makes various services available and the Committee will make best efforts to accommodate these issues. Typically two weeks notice is required when requesting these services. For more information on requesting this assistance see the website:

https://www.edmonton.ca/programs_services/for_people_with_special_needs/services-hard-of-hearing-or-deaf.aspx

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.

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X. Electronic Hearings and Hearings by Telephone

Although part of the role of this Committee is to determine the credibility of witnesses, there are situations where the Committee may hold hearings by telephone or other electronic means of communication if the situation warrants. The Chair can determine those situations where alternative hearing formats may be used.

Parties that are unavailable for a scheduled hearing, should either make arrangements to appoint an agent to deal with the hearing, request a postponement (which may or may not be granted depending on the circumstances), or prepare a paper submission and submit it for consideration to the Committee.

Interested parties may also prepare a paper submission and make a request for this to be considered by the Committee without making a personal appearance.
In cases where a party does not intend to attend a hearing and instead provides a written submission, the Committee will consider the paper submission and put the appropriate weight on the submission in the absence of the party.

B. PRELIMINARY ISSUES

I. Appeals of the Decisions of the City Manager:

The City Manager (and his/her delegate) has the ability to declare appeals insufficient or late. These decisions can be appealed to the Committee.

The procedure involved in the appeal of the decision of the City Manager will be similar to the procedure followed for appeals of *MGA* Orders. Each side will be given five minutes to speak and five minutes to respond to the other side. The sole issue in this type of appeal will be whether the City Manager was correct in declaring the appeal insufficient or late. Information on the merits of the appeal are therefore irrelevant and should not be presented.

It would be highly unusual for an interested party to have relevant evidence in relation to whether an appeal was insufficient or late. While interested parties can still request to present on this type of appeal, the Committee will only vote to hear them if they have evidence directly related to the appeal of the decision of the City Manager.

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Once the Committee hears all the evidence and arguments about whether an appeal was received late or was insufficient, they may deliberate and render a decision on this issue alone. This decision will not deal with any issues relating to the merits of the appeal.

If the decision of the City Manager is overturned, then the decision will indicate that a hearing on the merits of the appeal will proceed. A hearing on the merits of the appeal can happen on the same day as the appeal from the decision of the City Manager if all parties are ready to proceed. If all parties are not prepared to proceed then the appeal of the merits must be scheduled for another day.

If the decision of the Committee is to uphold the decision of the City Manager and declare the appeal late or insufficient, reasons will be issued, and no hearing on the merits of the appeal will proceed.

II. Preliminary Issue Applications:

The Committee may be required to deal with various types of preliminary issues including:

a. Whether an appeal was insufficient or late;
b. Revocation of interim stays;
c. Postponement requests.

CSLAC administration should be informed by the parties of preliminary issues as early as possible in advance of any planned hearing.

Preliminary issue applications can take place either on the date of the merit hearing, or on any other hearing date.

If a preliminary issue application is scheduled on the same day as the hearing on the merits of the appeal, the Committee will deal with the preliminary matter before they proceed to the merits of the appeal. At times, the decision on the preliminary issue may render the merit hearing unnecessary, or result in a postponement of the merit hearing.

There may also be times when the Committee is required to raise preliminary issues on their own accord to deal with such things as:

a. The authority of a party to appeal;
b. Whether a party has the appropriate authority to act as an agent on behalf of another party.

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A brief preliminary hearing will usually take place to deal with any preliminary issues. Each party will be given 5 minutes to make a presentation, and 5 minutes to respond to the other party's presentation, on any preliminary issue.

There are no disclosure requirements for preliminary issue applications. However, if there are complicated or voluminous amounts of evidence which cannot be easily responded to, each party should provide their evidence to the other side before the date of the application to avoid requests for adjournments to respond to evidence.

If an issue that needs to be dealt with as a preliminary issue is not identified until part way through the hearing of the merits of an appeal, the merit hearing will be stopped, and the preliminary issue will be dealt with prior to the continuation of the merit hearing.

C. EVIDENCE - GENERAL GUIDELINES

I. Authority

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

II. Definition

Evidence is the materials which are submitted to establish the factual basis against which legal interpretation, policy and logical reasoning will operate.

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.

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.

The Committee needs to hear evidence that is relevant as this helps the Committee to answer part or all of what it must decide. In addition, the evidence needs to be reliable, as that will help the Committee to determine the value of the

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evidence or to what degree it can be sure that the evidence truly and accurately depicts or describes the events.

There are times when irrelevant evidence is presented to the Committee. Part of the role of the Committee is to determine which evidence is relevant and useful and which evidence is not relevant or not useful. The Committee retains the discretion to make these determinations. The mere fact that irrelevant evidence has been heard by the Committee does not mean the Committee will rely upon it or place any weight upon it.

III. Admissibility

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.

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.

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.

Privileged communications are not admissible in evidence unless the privilege is waived. Privileged communications include communications between a lawyer and his or her client, and many types of settlement discussions.

IV. Oath

The Committee may require a person appearing before it or making any claim or submission to it to do so under oath or affirmation. Typically this will only be done upon request by a party.

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?

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?

Other forms of oaths may be available upon request.

V. Adjournments As A Result Of New Evidence That Has Not Been Disclosed

Situations may arise where a party during a hearing is surprised by evidence presented by a party and requires an adjournment in order to respond to the evidence, or makes a request to exclude evidence because it was not properly disclosed.

The Committee will only consider granting an adjournment or excluding evidence if a party makes a request for these remedies.

During a licencing Hearing, the Committee, upon hearing an objection that evidence should have been disclosed, can make the following decisions:

a) The evidence should have been disclosed and will not be heard by the Committee;
b) An adjournment will be granted to allow a party to respond to the evidence;
c) The evidence is of such a nature that no adjournment is necessary to respond to the evidence; or
d) Any other decision that the Committee feels is appropriate.

Since disclosure prior to a hearing is not required for Preliminary Issue Applications, MGA Orders, Community Standard Bylaw Orders, and Weed Control Orders, the Committee cannot exclude evidence for failing to disclose

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evidence prior to the hearing. However, the Committee can still adjourn the hearing to allow a party to be able to respond to the evidence. In these cases the Committee will only grant an adjournment if there was no way to expect the evidence to have been presented.

The following is a list of factors that the Committee may consider in determining whether to accept evidence, or whether to adjourn a hearing.

a) The fairness of the hearing process;
b) The amount of time requested for the adjournment;
c) The importance of the evidence to the hearing;
d) The importance and nature of the required response to the hearing;
e) Whether the party intentionally hid evidence and surprised the other side with the evidence, or whether the new evidence was presented inadvertently;
f) Whether the evidence should have been disclosed prior to the hearing;
g) Whether the parties consent or object;
h) The nature of the hearing.

The importance of the hearing to the appellant (e.g. is this a hearing dealing with the livelihood of a party, or the removal of garbage from a property).

VI. Protection from Giving Evidence

No Member of the Committee will be required by any court to give evidence relating to the hearing, the processes behind the hearing, or the deliberations associated with the hearing, without an Order of the Court.

VII. Record of Prior Decision Maker

A Record is a document that contains all of the information that was in front of and relied upon when a decision maker is making a decision.

There are situations where the CSLAC Bylaw requires a prior decision maker to produce a Record for the purposes of a licensing hearing. In such circumstances, the Record shall be produced and distributed in accordance with the CSLAC Bylaw.

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The Record will typically contain evidence and information that was before the prior decision maker. This is evidence and information that can be considered by the Committee and may be referenced by either party. In addition, the Committee may ask the prior decision maker questions about the evidence within the Record or to clarify the contents of the Record.

VIII. Interpretation of Legislation

There are times in making a decision where the Committee may have to interpret bylaws or other pieces of legislation in order to arrive at a decision. Parties to a hearing are free to make arguments, to provide case law, or to provide evidence as to why a particular interpretation of a piece of legislation is the interpretation that should be accepted by the Committee.

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SECTION 4 - SCHEDULING AND HEARING
MGA Orders/Weed Control Act/Community Standards Hearings

MGA Section 545 and 546 Order hearings, Section 29.2 of the Community Standards Bylaw, and *Weed Control Act* hearings, are reviews of orders issued by City Administration. Evidence may be introduced and interested parties may request to speak on the day of the hearing.

An appellant who receives an order issued under Section 545, 546 of the MGA or the *Weed Control Act*, and who is simply asking for additional time to comply with the order, should make it clear why they require additional time to comply.

There are times when the Committee is informed by City Administration that an order has been complied with by the person receiving the order. This may mean that the hearing is no longer necessary. Even if the City informs the Committee that the Order has been complied with, the appellant may still proceed with their request for review if that is what the appellant desires (For example, the appellant may still ask the Committee to decide whether the Order was or was not valid). The Committee will only cancel a request for review in these circumstances when informed by the appellant (in writing) that the request is being withdrawn.

I. Scheduling

***Municipal Government Act* Orders**

When the Committee receives a request for review of an order issued under Section 545 or 546, the Committee will automatically schedule the hearing for the next date that the Committee meets if that date is at least 10 days later. If a request for review is received within 10 days of the next scheduled date, the request for review will be scheduled on the next date that is at least 10 days from the date the request for review is received.

***Weed Control Act* Notice Appeals**

An appeal of a Weed Control Notice will be set for the next scheduled meeting that is at least 5 days from the date the appeal is received.

II. Notice of Hearing

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 legislation. Service of the hearing notice will usually, although not always, take place by regular letter mail or email.

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III. Submissions / Pre-hearing Disclosure

There is usually no record of a prior decision maker available for hearings of Orders under Section 545, 546, Weed Control Orders or notices issued pursuant to the Community Standards Bylaw. Therefore there is no requirement to produce a record of a prior decision maker.

Evidence is requested to be submitted to the Committee the Friday prior to the hearing, so that materials may be provided to the Committee members and other parties (if possible) in advance of the hearing. Updated evidence may be provided at the hearing in electronic or paper form. Requiring evidence in advance of the hearings ensures that the need to adjourn hearings is limited.

In rare cases, hearings under these provisions may result in more complex hearings, with complex issues. In these cases, in order to ensure that the hearing will proceed as expeditiously as possible, the Committee may suggest to all parties that evidence be exchanged prior to the hearing to ensure that both sides know the nature of the evidence, issues, and are able to adequately respond without the need for adjournments.

Notwithstanding that there are typically no pre-hearing disclosure requirements in these types of hearings, if there are cases where a party feels that they have been surprised by material, they are under an obligation to make that fact known and request an adjournment in order to respond to the material. (See Section 3 C.V of this Manual).

IV. Introduction to the Hearing

On the day of the hearing, 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:
    i. the order of presentation
    ii. anticipated length of hearing
    iii. recesses and breaks
    iv. legislative authority
    v. the decision
d. deal with any preliminary matters.

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V. Parties

The parties to *Municipal Government Act* Section 545 and 546 hearings, *Weed Control Act* hearings and hearings pursuant to Section 29.2 of the Community Standards Bylaw are:

a. the appellant;
b. the respondent, being the City of Edmonton.

Other people may be in attendance at the hearing such as an interested party, interpreter, expert witness or other witnesses. Hearings are typically considered to be open to the public.

VI. Order of Presentation

Normally, the order evidence is presented by parties in attendance at Section 547 or *Weed Control Act* hearings will be as follows:

a. Presentation by the appellant;
b. Questions to the appellant by Committee members;
c. Presentations by interested parties in favour of the appellant's position;
d. Questions to interested parties in favour of appellant by Committee members;
e. Presentation by administration (respondent);
f. Questions to the respondent by Committee members;
g. Presentations by interested parties 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 the respondent to new information;
l. Questions to the respondent by Committee members;
m. The appellant will be allowed the last word in a hearing, if so desired.

VII. Time for Presentations

The typical procedure for these types of hearings is as follows:

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.

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d. The appellant and respondent each have up to five minutes to respond to new information. This includes time for argument.
e. Committee members may ask questions of any party after they present.

Upon request, the Committee may, by motion, extend the amount of time given to a presenter. A decision whether to extend the time may take into account various considerations including:

a. the nature and complexity of the issues;
b. the nature and complexity of the evidence;
c. whether a party requires the time to present new evidence or argument or whether the party intends to repeat evidence or argument that was already presented.

If a party feels surprised by new evidence that was not disclosed, they may ask for an adjournment to allow time to respond to this new evidence (See Section 3 C.V of this Manual).

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SECTION 5 - SCHEDULING AND HEARING
Licencing Hearings

I. Scheduling

It is acknowledged that there are times when licencing appeals require special consideration. If a licencing appeal appears to be relatively simple, the appeal will be set for the next available Committee date. When a matter appears to be more complex and may require legal submissions by the parties, the Committee will make best efforts to schedule the matter on a date that is convenient for all parties.

II. NOTICE OF HEARING

For licencing hearings, the Clerk of the Committee will unless otherwise agreed, 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. Service of the hearing notice will usually, although not always, take place by regular letter mail or email.

III. Submission / Pre-hearing Disclosure

Prior to the date of any licencing hearing, all parties must follow certain rules of disclosure.

The representative of the City who made the licencing decision that is appealed must provide one copy of the Record to the Committee at least **30 days** prior to the scheduled hearing date.

All parties, including interested parties, wishing to speak or introduce evidence must email or submit one copy 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 Committee. 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.

At least **ten days** prior to the scheduled hearing date all parties, including interested parties wishing to respond to evidence must email or submit one copy of argument, evidence or substance of testimony which will be presented as rebuttal at the hearing.

After receiving copies of the Record and evidence, administration for CSLAC will ensure that a copy of the material is provided to the parties to the hearing. Copies will not be provided to interested parties but interested parties may view the submissions upon request.

Copies of the record and evidence will be circulated to Committee members at least **one week** prior to the scheduled hearing.

In cases where any party feels that they have been surprised by material that was not properly disclosed before the hearing, they are under an obligation to make that fact known, and if necessary, request an adjournment in order to respond to the material or ask that the material not be heard by the Committee. (See Section 3 C.V of this Manual).

IV. Hearing "de novo"

A licencing appeal before the Committee is a hearing de novo. "De novo" is a Latin term which means anew or starting again. For licencing hearings, both the appellant and the respondent, in accordance with the disclosure rules found in the Bylaw, are able to provide new information to supplement the material that was available to the individual that initially made the licencing decision (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.

V. Introduction to the Hearing

On the day of the hearing, 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:
    vi. the order of presentation
    vii. anticipated length of hearing
    viii. recesses and breaks
    ix. legislative authority
    x. the decision
d. deal with any preliminary matters.

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VI. Parties

The parties to a licencing hearing usually are:

a. the appellant;
b. the respondent, which is often a representative of the Public Safety Compliance Team;
c. the member of the City administration of the City of Edmonton who made the licencing decision (the Decision Maker).

Depending on the circumstances of any individual appeal, there may be other parties that are involved in an appeal.

VII. Order of Presentation

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

a. Presentation by appellant;
b. Questions to the appellant by Committee members;
c. Presentation by interested parties in favour of the appellant;
d. Questions to interested parties in favour of the appellant by Committee members;
e. Presentation by a representative of the respondent;
f. Questions to the respondent by Committee members;
g. Presentation by interested parties in favour of the respondent;
h. Questions to interested parties in favour of the respondent by Committee members;
i. Response by appellant to new information;
j. Response by respondent to new information;
k. The appellant will be allowed the last word in a hearing if so desired.

In addition to the above procedures, there are certain types of appeals where a prior decision maker has made a decision that has now been appealed to this Committee. These decision makers are required to produce a Record which contains all the information they had at the time they made the decision. The Committee may, at any time, request clarification of the Record from a prior decision maker.

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VIII. Time for Presentations

The typical procedure for licencing hearings is as follows:

a. The appellant and respondent each have up to 20 minutes to make their
b. presentation and 20 minutes to respond to new information. This includes time for argument.
c. Interested parties have up to five minutes to make their presentation.
d. Upon hearing from each party or witness each Committee Member may ask questions of that party or witness.

Upon request, a Committee may, by motion, extend the amount of time given to a presenter. A decision whether to extend the time may take into account various considerations including:

a. the nature and complexity of the issues;
b. the nature and complexity of the evidence;
c. whether a party requires the time to present new evidence or argument or whether the party intends to repeat evidence or argument that was already presented.

If a party feels surprised by new evidence that was not disclosed, they may ask for an adjournment to allow time to respond to this new evidence (See Section 3 C.V of this Manual).

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SECTION 6 - POSTPONEMENTS

The Committee will not postpone a hearing unless there are compelling reasons to do so. A key consideration in making a decision to postpone will be whether a denial of the postponement will result in a breach of natural justice.

In exercising its discretion with respect to requests for postponements, the Committee must balance the rights of all parties to a fair hearing against the public expectation of efficiency in processing appeals.

A. COMPELLING REASONS

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 peremptory 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) Working with the City to resolve the issue being appealed;
g) Unexpected delays in the receipt of relevant documents.

Note: notwithstanding a reason is listed in the above list, this does not guarantee an adjournment or postponement will be granted. Each case must be considered on its own merit taking into account all relevant factors.

B. NON-COMPELLING REASONS

Non-compelling reasons for granting a postponement include:

a) Absence from the hearing of any of the parties and/or their witnesses without additional reasons;
b) Scheduling conflicts that have arisen after setting the hearing date;
c) Insufficient time to prepare;
d) Unavailability of easily obtainable documents.

Note: notwithstanding a reason is listed in the above list, this does not guarantee an adjournment or postponement will be denied. Each case must be considered on it's own merit taking into account all relevant factors.

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

A non exhaustive list of factors which the Committee may consider in dealing with a request for an adjournment or postponement include:

a) Previous requests for postponements;
b) The number and seriousness of the issues to be decided;
c) The cooperativeness of the appellant/respondent;
d) Agreement amongst the parties to the postponement;
e) The number of interested parties;
f) The timeliness of the application;
g) Whether the appellant still retains the Licence that is under dispute;
h) Any effect a postponement may have on the enforcement of an Order; or
i) Any effect a postponement may have on the Public Interest.

D. PROCEDURE

Requests for postponements may be made at any time either before or during a hearing. The Committee must issue a 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.

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SECTION 7 - INTERIM STAYS OF PROCEEDING

Upon an appeal being made to the Committee, all proceedings relating to the matter at issue are automatically stayed (cannot proceed) until the Committee hears all the evidence and renders a decision. This is called an interim stay.

An interim stay can be revoked by the Committee upon application to the Committee.

An application to revoke an interim stay will be dealt with using the rules relating to preliminary issue applications.

A revocation of an interim stay will be granted in three circumstances:

a) There has been a material change in circumstances that warrants revoking the interim stay;
b) The conduct of the appellant warrants revoking the stay;
c) The operation of the interim stay creates or contributes to a situation of imminent danger to public safety.

In making a decision to revoke an interim stay the Committee can take into account various factors including:

a) The effect of revoking the interim stay on the appellant;
b) The effect of the interim stay on the surrounding community, including any financial impact on surrounding businesses;
c) Whether there has been any attempt to delay the proceedings or otherwise subvert the proceedings;
d) Whether there are any significant public safety issues associated with the interim stay;
e) Whether a situation is degrading or improving since the interim stay was put into place; and
f) Any other factors relevant to the effect of the interim stay on public safety.

If the interim stay is revoked, the Committee will issue a decision with reasons, but the revocation of the interim stay will be immediate upon the Committee voting.

After dealing with any issues associated with revoking an interim stay the Committee will deal with the merits of the appeal. A hearing relating to the revocation of an interim stay and the merits of the appeal can be heard on the same day if the appropriate notice has been given to all parties.

SECTION 8 – SERVICE AND FILING

A. SERVICE OF DOCUMENTS

A notice or other document required to be filed with the City is deemed to be properly filed if it is received by the Community Standards and Licence Appeal Committee by the times specified in this Manual at:

Address: **Main Floor Churchill Building**
10019 – 103rd Avenue NW
Edmonton, Alberta, T5J 0G9

Phone: Ph. 780 - 496-5026
Fax: 780 - 401-7054

Email: cslac@edmonton.ca

A notice or other document required by the Manual 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 Community Standards and Licence Appeal Committee;
b) sent to the address for that person stated on their appeal letter; or
c) emailed to a person when an email address is provided by a person.

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 presumed to have been effected on the date of receipt or seven days after the date of mailing, whichever first occurs; or
c) if filing or service is affected by email, the date the email is sent will be presumed to be the date it is received unless a party can prove there was a reason it could not have been received on that date (for example a server problem).

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SECTION 9 – COMMITTEE DECISION AND APPEAL

A decision of the Committee is the final determination of an appeal. Reasons are the Committee's explanation of why they made the decision they made.

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.

This decision may be picked up, mailed, or emailed to a party. Parties should ensure that the CSLAC Administration knows how the party would like to receive the decision.

A. MAJORITY RULES

The decision of the majority of the Members sitting on the Committee is the decision of the Committee.

B. ORAL AND WRITTEN

Decisions may be given orally in public by the Chair upon conclusion of the hearing, or the Committee may decide to adjourn the hearing to provide additional time to deliberate and issue the decision orally in public at a later date. Votes on the decision must be in public. Reasons for the decision do not need to be provided orally and can follow in the written decision.

Following the issuance of an oral decision, the Committee must provide a written confirmation of their decision along with reasons.

Except as otherwise provided by the *Municipal Government Act* or other legislation, the Committee's written 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.