

EDMONTON
COMMUNITY STANDARDS AND LICENCE APPEAL COMMITTEE

Citation: 1193771 Alberta Ltd. v Development Services (City of Edmonton), 2022 ABECSLAC 10004

Date:	April 21, 2022
Order Number:	303035994-002
CSLAC File Number:	CSLAC-22-004

Between:

1193771 Alberta Ltd.

and

The City of Edmonton, Development Services

Committee Members

Kathy Cherniawsky, Chair
Joel McDonald
Don Fleming

DECISION

- [1] On April 5, 2022, the Community Standards and Licence Appeal Committee (the “Committee”) heard an appeal that was filed on February 9, 2022. The appeal concerned the decision of Development Services to continue existing conditions on Business License 303035994-002 issued to 1193771 Alberta Ltd., pursuant to Section 7(c) of the *Business License Bylaw 13138*.
- [2] The subject property is located at 6622 - 104 Street NW, Edmonton.
- [3] The appeal hearing on April 5, 2022 was held through a combination of written submissions and video conference. The following documents were received prior to the hearing and form part of the record:
- The City of Edmonton submissions, including a submission from the Edmonton Police Service; and
 - The Appellant’s submissions.
- [4] The following exhibit was presented during the hearing and forms part of the record:
- Exhibit A – Business Licence Certificate.

Preliminary Matters

- [5] At the outset of the hearing, the Chair confirmed with the parties in attendance that there was no opposition to the composition of the panel.
- [6] The Chair outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [7] The appeal was filed on time, in accordance with Section 30(1) of the *City of Edmonton Bylaw 20002 Business Licence Bylaw*.

Summary of Hearing

***i) Position of R. Schuldhaus, Legal Counsel for the Appellant, representing
1193771 Alberta Ltd.***

Appellant

- [8] The Appellant would like the conditions of the approved business licence to be amended.
- [9] The Appellant referred to the (Edmonton Police Service “EPS”) report regarding the incidents that took place at the Nice Inn.
- [10] The building is an open style motel with easy access for any visitors or guests.
- [11] The EPS would prefer people to ask all guests and visitors for identification when entering the motel. This is difficult to do with the open style concept.
- [12] The majority of the guests are long term at the motel.
- [13] People are required to give two to three weeks notice if a long term guest needs to be evicted.
- [14] The Appellant was not able to arrange a meeting with the EPS to find a solution regarding the incidents that took place at the subject site.
- [15] In the Appellant’s opinion, the conditions were imposed due to the crime in the area.
- [16] The Appellant would like information from the EPS to discuss the conditions that are not being followed with the operation of the motel.
- [17] The Appellant understands that the imposed conditions would only be in place if the business was not properly operated.
- [18] In the Appellant’s opinion, other businesses should have the same conditions as the ones imposed on this business.

- [19] Incidences at the motel are decreasing. The Appellant provided a detailed account of the incidents that took place since December, 2021 after the time period covered in the materials submitted by the City. He explained the nature of the incidents and how they were addressed and resolved.
- [20] They would prefer to address the incidents with the security guard rather than calling the EPS.
- [21] The Appellant is not able to operate his business with the imposed conditions.
- [22] The occupancy rate has dropped to 45 percent since last year when it was 76 percent.
- [23] In their opinion, the subject business does not have proper help from the EPS to ensure that the issues have been addressed.
- [24] The subject business is almost bankrupt due to the conditions that are imposed.
- [25] There have been two or three incidents per month.
- [26] The Appellant wishes to focus on public safety and cooperate with the EPS.

R. Schuldhaus - Legal Counsel for the Appellant

- [27] In his opinion, the employees should be able to deal with any incidents at the motel.
- [28] The Appellant would like to use his security company to deal with any issues before the EPS are called.
- [29] The Appellant is now doing a better job to control any incidents and ensure the safety of the staff and the public.
- [30] Incidents can occur at any motel.
- [31] R. Schuldhaus provided the following responses to questions by the Committee.
- a) The condition to log reports is not an issue.
 - b) Only one person per room should be required to provide identification.
 - c) The Appellant would like to have on-call security 24 hours a day.
 - d) They will no longer have long term guests.
 - e) They need to provide guests appropriate notice to vacate the premises.
 - f) The security company they hire charges a fee and the costs have increased significantly.

- g) They had on-call security for the first two or three months in 2021. Then, they had on-site security.
- h) When the on-call security guard is called, security arrives at the site quickly to address the issue rather than calling the EPS
- i) The cost for on-call security is significantly lower, because they use the security service approximately ten times per month. The price of the service varies with the number of calls per month.
- j) They will be aware of the names that are on the “banned” list.
- k) If the imposed conditions are implemented it will have a negative impact on the Appellant’s business.

ii) *Position of City of Edmonton, Law Branch*

- [32] C. Hodgson, City of Edmonton Law Branch, appeared to address any legal issues. The original decision maker, V. Ghomashchi, is no longer with the City.
- [33] In the new *Business Licence Bylaw* under section 81(4) is an amendment that updates the CSLAC Bylaw to give the Committee power to make decisions similar to the manner in which the Committee dealt with decisions under the old Bylaw.
- [34] There is power under the new Bylaw to change the business category if the City Manager feels it fits in with a better category on Licence renewal.
- [35] The decision cites the former version of the Bylaw and the Business Category is also incorrectly issued under the wrong Bylaw. In their view the Committee decision will need to be made using the provisions of the current Business and Licencing Bylaw, Bylaw 20002.
- [36] Section 24 of the new Bylaw is the section that allows the City Manager to proceed with the Licence Review. This Licence Review would fall under Section 24(e)(v) as there is a public interest reason that they need to continue conditions that were similar to those imposed under the old Business Licence.
- [37] The parties were aware a renewal would be coming up for this Business Licence. The EPS decided they wanted a Licence Review as a consultant on the Licence and that is why they are in this situation. Using the new Bylaw 20002 sections, concerns may be raised by a consulting agency through a consultation per section 24(e)(iv) and the process was in accordance with section 11(6) as the EPS is one of their consulting agencies.
- [38] They acknowledge differences in the old and new versions of the Bylaw. In particular, the Residential Business Category and the Hotel/Motel Business Category list only Fire Rescue Services and Alberta Health Services as consulting agencies and do not list the EPS. Further, General Business does not list any consulting agencies. However, Section

11(6) states despite subsection (1), the City Manager may require any additional consultations in accordance with the timelines in subsection (2) if the City Manager deems it to be in the public interest.

- [39] The prior Business Licence had five conditions. The City wanted to hear from the EPS as to whether or not there were any changes to the business that require any conditions to either continue, be decreased, or be increased.
- [40] The Committee has the authority to impose conditions or cancel the Business Licence. The City is suggesting conditions be continued the same as last time, with one small change regarding the lighting. That condition has been addressed and has been removed.

iii) Position of the Decision Maker, Development Service, S. Exner

- [41] S. Exner who is currently the acting Program Manager for Business Licensing also appeared to make representations on behalf of the decision maker.
- [42] On January 12, 2021 his predecessor, V. Ghomashchi imposed five conditions related to incident logging, on-site security, admittance of guests, video surveillance, and exterior lighting on the Business Licence issued to Nice Inn.
- [43] The on-site security condition was appealed to CSLAC on December 7, 2020 and that appeal was heard March 16, 2021.
- [44] The Appellant did not object to any of the other conditions of the Business Licence at that time.
- [45] In its March 23, 2021 Decision, File No. CSLAC-20-016, the Committee upheld the on-site security condition. The Committee determined that the incidents at Nice Inn are extraordinary when compared to other hotels/motels and agreed with the EPS that preventative steps were needed to cause a decline in the number of potentially violent incidents at this location.
- [46] The Committee noted that the City could have imposed more restrictive conditions or canceled the Business Licence completely. However, the Committee imposed a condition for an 8 hour on-site security as a reasonable balance between the value of security and its cost to the business.
- [47] On January 28, 2022, V. Ghomashchi issued a decision to continue 4 of the 5 existing conditions on the Nice Inn Business Licence due to ongoing public safety concerns. V. Ghomashchi chose not to maintain the previous condition to repair and maintain and use exterior lighting as the Appellant had satisfactorily addressed this issue.
- [48] This decision to continue the remaining conditions related to incident logging, on-site security, admittance of guests, and video surveillance was based on a proposal from Constable Dehaas with the EPS.

- [49] Constable Dehass's proposal outlines the ongoing pattern of public safety incidents and breaches of the conditions since the conditions were confirmed by CSLAC a year ago.
- [50] Constable Dehaas provided details of 34 incidents from April to December 2021 including unauthorized guests on the premises, failure to properly register and obtain identification from guests, insufficient on-site security, criminal activity such as drug use, trafficking, prostitution, guest eviction issues, and unwillingness by management to evict or enforce bans against problematic guests.
- [51] In addition, Constable Dehaas noted that in 2021, 73 police events were linked to Nice Inn. Although this is a decrease from 2019 and 2020, it is still significantly higher than the number of police events that are associated with other comparable motels in the area.
- [52] On January 13, 2022, V. Ghomashchi issued a notice of proposal to continue conditions to the Nice Inn subject to conditions that were imposed on the previous Business Licence. The notice of proposal stated that maintaining the conditions is in the public interest due to public safety concerns that still exist at Nice Inn. It refers to several incidents that have required police attention and breaches of the conditions during the previous term of the Business Licence.
- [53] The Appellant was given until January 25, 2022 to respond to the notice with reasons why the conditions should not be maintained.
- [54] The Appellant responded to the notice on January 25, 2022 indicating he would continue with incident logging, on-site security, and video surveillance "the same as last year". Regarding the conditions of admittance of guests, he indicated that he would continue to check guest identification but noted that a motel operator cannot always monitor who accesses the guest rooms and cannot immediately evict guests due to legal constraints.
- [55] On January 28, 2022, V. Ghomashchi issued a decision to continue conditions for the duration of the term of the next Business Licence despite noting a decline in the number of incidents in 2021. The decision states the conditions appear to be having a positive effect and are still necessary to prevent further incidents and to reduce the severity of incidents that do occur. Upon reviewing the material related to this matter, he believes that V. Ghomashchi's decision was appropriate and maintaining the conditions under the next Business Licence is necessary to improve the public safety at Nice Inn.
- [56] Although the Appellant indicated he would voluntarily continue with some of the practices required by these conditions in the same manner as last year; the proposal from the EPS suggests that the conditions have not been followed consistently.
- [57] In his opinion, the Appellant and the Nice Inn have not demonstrated their ability to improve public safety in a sustainable manner at the Nice Inn without these conditions. Many of the incidents that the Appellant described at the hearing underscore the continued need for the conditions.

[58] He would like the Committee to uphold the decision to maintain the conditions for the remainder of the current Business Licence term which expires on January 28, 2023.

[59] S. Exner provided the following responses to questions by the Committee.

- a) He could not confirm the existence of any other motels in the city that have the same conditions.
- b) Page 20 of the EPS submission outlining a chart of Police events shows that there were 122 incidents in 2019 and 73 in 2021. The incidents are similar to the ones outlined in the previous decision. There has been some progress in the number of events, but it is still significant and the conditions are warranted.
- c) He is not asking that the Business Licence be denied and he would like the Appellant to have the opportunity to improve his business.
- d) Incidents involving unregistered guests will be mitigated by a condition requiring proper identification and as it is difficult to speak to every guest that comes to the motel, having on-site security will also help.
- e) A visitor is someone that is not staying overnight and remains on a short term basis relative to the registered long term guest.
- f) This is a unique situation and guests providing identification will address concerns.
- g) They are not asking for conditions to be imposed in perpetuity, but want them imposed until the Licence expires in 2023. The conditions will be revisited at that time.
- h) The initial proposal was for 24 hour on-site security but was reduced to 8 hours by the prior Committee's decision in 2021.

iv) Position of Constable N. Dehaas, representing the Edmonton Police Service ("EPS")

[60] Constable N. Dehaas appeared on behalf of the EPS.

[61] He confirmed that he submitted the affidavit that was provided to the Board and has first hand knowledge of the situation

[62] He referred to the Appellant's written submission noting:

- a) With regard to an incident that happened across the street at Home Depot - he spoke to the manager and employees at Home Depot and Staples and they talked about how incidences of shoplifting and drug use are associated with the Nice Inn.
- b) With regard to the condition of video surveillance and a new recording system - the Appellant indicated that his staff are not familiar with the process to transfer footage.

A beat patrol member on Whyte Avenue wanted information but the staff were not trained to obtain security footage. This breaches the wording of the condition. It is the Appellant's responsibility to train their evening staff to comply with the conditions.

- c) With regard to the tickets issued to the Nice Inn - the tickets covered multiple incidents and were supported by overwhelming evidence and not contested. They do not give tickets for the visitors.
 - d) With regard to the problematic long term guests- they realize there are issues with long term guests and dealing with recommendations with the EPS, however the issues still continue. People that are on the banned persons list still access the motel under a registered guest.
- [63] The purpose of on-site security is to provide safety for staff and guests by preventing occurrences from ever taking place.
- [64] The drop in occupancy has occurred because customers do not want to be exposed to the activities that are still taking place.
- [65] He agrees that the open style layout of the motel makes it difficult for staff to monitor and observe what is happening. It is easy for the public to enter the building. The on-site security will protect the staff.
- [66] The identified problematic types of activity and breaches of conditions by the Appellant are still taking place. Several tickets could have been issued, but he was trying to be compassionate. The EPS recommendation, and his opinion, is that the Business Licence should be canceled.
- [67] N. Dehaas provided the following responses to questions by the Committee.
- a) The poor business practices include failing to check who is staying in their motel and rentals that turn into a long term stay.
 - b) Some people threatened the staff and were still permitted to stay. These are the things outlined in his report that are poor business practices.
 - c) Issues that are currently happening should not be allowed at a motel.
 - d) He confirmed that he would like the Business Licence to be canceled. He does not believe the imposed conditions will be enough for the safe operation of the business based on the historical record.
 - e) In his opinion, checking the identification of guests should be implemented or it will be abused. The exception would be of children 16 years and younger.
 - f) On-site security is essential for the business and should be maintained.

- g) He confirmed that the affidavit in the submission provided to CSLAC was the same material provided to the decision maker for the Licence Review.
- h) While each motel is unique in some ways, he believes that other motels are comparable and he does not believe the illegal activity is due to the motel being more walkable than the other motels in the area. There is a large area of residential housing in the area.
- i) There has been a brief change in the operation, but he cannot determine if that was due to the on-site security.
- j) Three tickets citing multiple infractions were issued and paid by the Appellant who did not dispute them as the evidence was extensive and obvious. Other potential tickets could have been issued, but after discussion with the Appellant he chose not to issue them.
- k) He could not confirm if there are other motels in the City that have the same Business Licence conditions.

v) Rebuttal of the Appellant, and R. Schuldhaus

[68] The issues are from the motel and not from him as an individual.

[69] The solution is to have some regulations that will control the number of people which is the issue.

[70] It is difficult to check all of the guests coming into the motel.

R. Schuldhaus

[71] Monthly reports were provided by the on-site security and show how issues should be dealt with. On-call security 24 hours a day is a better solution to address the issues.

[72] The response time with on-call security is faster and issues will continue to improve.

[73] In the last year, the reputation on Expedia and Google was not the same as other motels in the area.

[74] There are 47 rooms in the Nice Inn and currently there are 9 guests.

vi) Rebuttal of S. Exner, Business Licence

[75] He appreciates the personal costs to the Appellant; however, in his opinion, the conditions should not be removed.

[76] The new bylaw gives them the discretion to impose conditions for a certain time period.

Decision

- [77] The Appeal is allowed in part. The Business Licence is approved as issued by the City Manager's Delegate with the following variances:
- [78] The term of the Business Licence shall be one year from the issuance of this decision (to **expire on April 20, 2023**).
- [79] Condition 2 is deleted and replaced with the following:

2. Security

- a. Security shall be provided in accordance with one of the following options:
 - i. On-site security shall be provided by Security guards trained and employed by a security company licensed to operate within the City of Edmonton at the motel from 9:00 P.M. to 5:00 A.M. daily; or,
 - ii. On-call 24 hour daily security together with regular daily on-site patrol visits provided by Security guards trained and employed by a security company licensed to operate within the City of Edmonton every 4 hours from 5:00 A.M. to 9:00 P.M., each for a minimum of 10 minutes and every two hours from 9:00 P.M. to 5:00 A.M., each for a minimum of 10 minutes and the contract for these on-call/patrol services shall be provided to the Program Manager-Business Licencing before implementation of this option;
- b. Security guards must wear a uniform or other garment that clearly and visibly identifies them as security guards;
- c. Management shall maintain an accurate list of banned guests in a Ban Book or spreadsheet and make it available to all staff and security;
- d. Security guards shall be agents for the property permitted to ban guests;
- e. Security guards along with management shall enter the bans in the Ban Book or spreadsheet;

- f. Banned guests as identified by management and or security will not be allowed to enter the business's premises.

[80] Condition 3 is deleted and replaced with the following:

3. Admittance of Guests

- a. The legal names of all guests must be provided at check-in and at least one guest per room must present valid government-issued photo identification upon registering;
- b. All vehicles associated with any guests must be documented at check-in and updated if a change in vehicles occurs;
- c. All motel stays must be booked through the motel directly and the motel will not allow guests to sublet the premises.

Reasons for Decision

- [81] Section 30 of the Business Licence Bylaw 20002 allows a person to appeal a decision made under a Licence Review to the Community Standards and Licensing Committee (CSLAC). The decision at issue in this appeal was made on January 28, 2022 by the City Manager's delegate renewing the Appellant's Business Licence subject to four conditions (the Decision). The Appellant objects to two of the conditions imposed in the Decision.
- [82] Section 8(1)(a) of the CSLAC Bylaw authorizes this Committee to hear appeals of Licensing Decisions. Section 2(l) of the CSLAC Bylaw defines Licensing Decision to include decisions to impose conditions on a Licence issued pursuant to the Business Licence Bylaw 20002.
- [83] Section 8(2) of the CSLAC Bylaw states that when CSLAC decides an appeal of a Licensing Decision, the Committee has the same authority that has been granted to the City Manager under the applicable bylaw (here the Business Licence Bylaw 20002).
- [84] The Business Licence Bylaw 13138 was recently replaced by the Business Licence Bylaw 20002. As a preliminary matter, the Committee noted that the Licence Review commenced when the older version was in effect and the Decision was issued after the new version came into effect on January 17, 2022. Unfortunately, the Decision erroneously cites the sections of the former Business Licence Bylaw 13138. This Committee has applied the provisions of Business Licensing Bylaw 20002 to evaluate the appeal and render the CSLAC decision.

- [85] The Decision cites section 7(c) of the former Business Licence Bylaw 13138 for authority to impose the four conditions. That former section stated:

The City Manager may refuse to issue or renew a Licence, may suspend or cancel a Licence and may impose any conditions on a Licence for the following reasons: ... (c) in the opinion of the City Manager based on reasonable grounds it is in the public interest to do so.

- [86] Section 7(c) of the former Bylaw is not replicated in the current Business Licence Bylaw 20002. However, several sections of the current Bylaw, including the very definition of Licence Review in section 2 make it clear that the Delegate (and therefore this Committee) has the broad authority during a Licence Review to determine whether conditions will be imposed on the renewal of a Business Licence.
- [87] The Committee first considered the background information and submissions placed before it by the parties.
- [88] In 2021, the City Manager's delegate issued a Business Licence with a one year term to the Appellant subject to five conditions concerning a reporting log, on-site security, admittance of guests, video surveillance and exterior lighting. On appeal, CSLAC upheld the conditions and concluded that they had been imposed based on reasonable grounds in the public interest due to extraordinary circumstances (CSLAC-20-016).
- [89] In anticipation of the Licence Review for renewal, in early December 2021, Edmonton Police Service (EPS) (a consulting agency) provided a written submission to the City Manager's delegate concerning the business and how it had been operating since the imposition of the five conditions. The detailed submission included:
- a. Descriptions of 34 incidents showing a snapshot of what has been occurring at or near the premises between April 1, 2021 - December 5, 2021.
 - b. Statistics showing 129 security incidents and 50 police incidents between April 1, 2021 and December 5, 2021 (it is unclear whether these police incidents were restricted to the premises or also involved nearby locations) with a possible projection of 225 events for the year term of the Licence.
 - c. Analytical data showing the number of files drawn annually for the premises for the past three years.
 - d. Analytical data showing the number of computer aided dispatch events attributed to the premises showing 172 events in 2019; 253 in 2020 and 139 between January 1, 2021 – December 7, 2021.
 - e. Charts comparing occurrences which resulted in a file being drawn for the premises and for three other comparable hotel/motel operations, demonstrating the incidents at the premises were eight times higher in 2019 and five times higher in 2020 and 2021 calendar years than the yearly averages of the three other businesses.

- f. Summary of information concerning tickets issued in April and September that encompassed numerous breaches which were not contested and have been paid by the Appellant.
 - g. Information of two breaches that were not ticketed but occurred in December 2021.
- [90] EPS was concerned that management had perpetuated the problems by not following the conditions and by demonstrating an unwillingness to evict a couple of long term rental people who chronically caused problems and repeatedly breached motel rules despite EPS warnings, advice, and evidence.
- [91] In their opinion, the submitted information shows that the night staff along with hired security are ill equipped to properly manage and deter active criminal activity at the premises. Accordingly, their primary recommendation was that the Appellant's Business Licence should not be renewed.
- [92] Alternatively, if the Business Licence were renewed, EPS recommended the existing conditions should be continued for an additional year as the record shows a failure to operate the business safely. On this point, they acknowledge it has only been nine months of operations subject to conditions and that during this time the Appellant had not consistently contracted with a licenced security company that was properly invested in assisting the Appellant in deterring crime.
- [93] The Delegate sent the EPS information to the Appellant with a Notice of Proposal to Continue Existing Conditions on the Business Licence inviting their submissions on the matter in accordance with the provisions of Business Licence Bylaw 13138 (then in effect).
- [94] The Appellant replied that the Licence should not be denied as closing the business would leave no one to manage the place creating a disaster. The Appellant agreed to all of the proposed conditions "same as last year," but also highlighted practical difficulties monitoring all persons on the premises and that long term guests can only be evicted following proper legal process. The Appellant noted that incidents have dropped significantly in 2021 and that the police had not yet met with them and they wanted monthly meetings to review and analyze all incidents and devise methods to reduce them.
- [95] On January 28, 2022 the City Manager's delegate issued the Licence Review Decision renewing the Appellant's Business Licence until January 28, 2023 in the Business Category Hotel/Motel subject to four of the five previously imposed conditions. The delegate included the following Reasons for Decision:

The City finds that continuing the conditions on the new business licence is necessary to address persisting public safety concerns at the business premises. Although the licensee noted that the number of incidents in 2021 at the business premises has reduced from 2020, conditions are necessary to prevent further incidents and to reduce the severity of their impact if they occur. The imposed conditions appear to be working, and the

continued imposition of the same conditions may also help to further reduce the number of incidents.

Regarding the request for monthly meetings with EPS, the City notes that it cannot bind EPS to a requirement of this type, and therefore cannot make it a condition of the business licence. However, the City recognizes that if EPS has the capacity to hold such meetings, it may be beneficial to addressing the public safety concerns at the business premises. As such, the City will encourage EPS to meet with the business owner to discuss this request further.

[96] The Appellant's notice of appeal asked that Condition 2 be altered by replacing on-site security at specified times with 24 hour daily on-call security. Condition 2 states:

2. On-site security

- a. Security guards trained and employed by a security company licensed to operate within the city of Edmonton shall be used at the motel from 9:00 PM to 5:00 AM daily;
- b. Security guards must wear a uniform or other garment that clearly and visibly identifies them as security guards;
- c. Management shall maintain an accurate list of banned guests in a Ban Book or spreadsheet and make it available to all staff and security;
- d. Security guards shall be agents for the property permitted to ban guests;
- e. Security guards along with management shall enter the bans in the Ban Book or spreadsheet;
- f. Banned guests as identified by management and or security will not be allowed to enter the business's premises.

[97] At the hearing, the Appellant also requested for the first time that Condition 3 be changed by requiring only one registered guest per room to provide government issued identification in accordance with standard industry requirements and practice. Condition 3 states:

3. Admittance of Guests

- a. All guests checking in must present valid government-issued photo identification upon registering;

- b. All vehicles associated with any guests must be documented at check-in;
- c. All motel stays must be booked through the motel directly and the motel will not allow guests to sublet the premises.

[98] The Appellant advanced several arguments supporting their request to amend the conditions:

- a. The conditions unfairly single them out because they are properly operating the business and no other hotel/motels Licences issued in the City are subject to similar conditions.
- b. It is impossible to police all the people who enter the premises given the open layout. It is unfair and unusual to ask everyone for picture identification. An identification condition applicable to all guests discourages business and there is no bylaw authorizing them to demand identification. The condition is not effective and can be circumvented. The condition unfairly puts off all potential patrons, not just potential trouble makers.
- c. The Appellant disputes details of some of the documented occurrences arguing that they have done all that they could to maintain the safety of their employees and customers and public security is none of their concern.
- d. The Appellant's business is not responsible for incidents at neighbouring businesses. They cannot prevent guests and visitors from driving stolen cars. Many of the cited occurrences involved criminal activities like car theft which they cannot be held accountable for.
- e. Long term problematic guests are the real source of the problem. These guests are legally entitled to notice and cannot be immediately evicted as requested by EPS, the process takes a couple of weeks. The Appellant has now evicted the long term trouble makers. Details of security occurrences they have documented since December 2021 demonstrate there are less occurrences and the situation has improved now that these problematic guests have been evicted. There were two occurrences in December, four in January, four in February and two in March. This shows that their efforts have been successful.
- f. On-site security costs \$20.00 per hour and providing it eight hours a day is prohibitively expensive and not effective. On-call 24 hour security is better than limited on-site security because it is less expensive, covers more hours and provides a faster response time than phoning EPS.
- g. EPS failed to meet its duty to preserve order and to meet with them regularly to find resolutions.

- h. The Appellant's occupancy rate has dropped from 76 percent to 45 percent since the imposition of conditions and continuing them will force the business into bankruptcy leaving the premises without any supervision worsening the problems.
- [99] EPS acknowledged that there has been a reduction in the number of occurrences over the nine months since the imposition of conditions. Despite this trend, an unusually high level of occurrences persist and, based on their observations and experience, the Appellant's bad business practices (including failure to adhere to the imposed conditions concerning surveillance and identification of visitors and failure to promptly evict identified problematic guests) were the underlying reasons for the high level of criminal activity and social disorder on the premises and in the immediate vicinity.
- [100] EPS did not provide evidence concerning the frequency and nature of problems on and around the premises since December 2021, nor did they dispute the Appellant's documentation of more recent occurrences during 2022. However, they suggested that the Appellant's evidence of ongoing problems only tells a part of the story and actually in context supports their recommendation that the Business Licence ought not be renewed or alternatively at a minimum that the existing conditions be maintained. On this point, the Committee took note that the evidence provided by the parties concerning events in December is not consistent and that the Appellant may not be aware of all calls to EPS.
- [101] The City Manager's delegate did not attend the hearing. Spokespersons for the City argued the appeal should be denied. They acknowledged the wrong Bylaw had been applied and asked that the Business Licence be renewed, subject to the stated conditions, to enable the Appellant's business to continue in a manner consistent with the public interest. They reiterated the reasons contained in the Decision that the conditions appear to be working as the number of occurrences has fallen and they should be kept in place to further reduce the number of incidents for the ongoing public good over the next term. In their view the Appellant's failure to safely operate the business is evident in the submitted records.
- [102] Both EPS and the City representatives emphasized that requiring identification for all persons on the premises and on-site security are preventative tools. By contrast, on-call security is less effective because it is reactive, triggered only after an incident has occurred and often by that time requires responses better left to the EPS.
- [103] The Committee makes the following findings.
- [104] The Committee has an obligation to fairly consider the Appellant's interests and also the safety and interests of the Appellant's employees, all the Appellant's guests, passersby, the neighbouring residents and commercial businesses, and the local community.

- [105] The Committee acknowledges that the conditions carry financial burdens for the Appellant and may discourage some patrons. Also, it notes that some of the issues and crimes cannot be prevented by the Appellant.
- [106] However, the Committee disagrees with the Appellant's view that the public good is none of their concern. In the Committee's view, it is in the interests of all parties and the public to reduce crime, violence and social disorder on the premises. The Committee agrees with EPS and the City representatives that good business practices and improved compliance with all of the conditions will help alleviate the extraordinary ongoing frequency of serious problems documented at the premises and potentially improve business.
- [107] The evidence provided by the Appellant was that security issues in the past four months occurred at all hours, but the majority were between 5:00 a.m. and 9:00 p.m. when on call security may respond faster than EPS. This may be true, but it also may be true that the onsite security has discouraged criminal activity from 9:00 p.m. to 5:00 a.m. and that explains the timing of the majority of the occurrences. While no receipts were provided, the Committee heard from the Appellant that Condition 2 costs close to \$90,000 annually based on a standard hourly rate of \$20.00. The Committee also considered submissions from EPS and the City representatives that the on-site security is a preventative measure to avoid criminal and potentially violent occurrences and preserve safety rather than address these issues after the fact. In this sense prevention is good for all parties.
- [108] The Committee recognizes that the frequency of calls to the police and security incidents have decreased materially, but also that the calls remained approximately five times higher than the average experienced at three other comparable hotel/motel premises during 2021. This is less than the statistics for 2020 and similar to the statistics for 2019.
- [109] The evidence before the Committee is that the downward trend of incidents documented by the Appellant has continued over the first three months of 2022. The reason for decline is not entirely clear, but all parties agree that the eviction of long term guests who have chronically contributed to problems on the premises has improved the situation.
- [110] The Committee found the detailed information provided by EPS persuasive. The Committee finds that the number of occurrences remain extraordinarily high and justifies the imposition of conditions aimed at prevention. Given the persisting public interest concerns and in the interests of all the Appellant's guests, visitors and employees, the Committee concludes that conditions to prevent potentially violent occurrences and reduce the unusual frequency of these occurrences are warranted, reasonable and serve the public interest. In short, some preventative measures should be maintained. However, in view of the eviction of the problematic long term tenants, the reduction in frequency of occurrences and cost of on-site security from 9:00 p.m. to 5:00 a.m. daily, Condition 2 is deleted and replaced with the following:

2. Security

- a. Security shall be provided in accordance with one of the following options:
 - i. On-site security shall be provided by Security guards trained and employed by a security company licensed to operate within the city of Edmonton at the motel from 9:00 PM to 5:00 AM daily; or,
 - ii. On-call 24 hour daily security together with regular daily on-site patrol visits provided by Security guards trained and employed by a security company licensed to operate within the city of Edmonton every 4 hours from 5:00 AM to 9:00 PM, each for a minimum of 10 minutes and every two hours from 9:00 PM to 5:00 AM, each for a minimum of 10 minutes and the contract for these on-call/patrol services shall be provided to the Program Manager-Business Licencing before implementation of this option;
- b. Security guards must wear a uniform or other garment that clearly and visibly identifies them as security guards;
- c. Management shall maintain an accurate list of banned guests in a Ban Book or spreadsheet and make it available to all staff and security;
- d. Security guards shall be agents for the property permitted to ban guests;
- e. Security guards along with management shall enter the bans in the Ban Book or spreadsheet;
- f. Banned guests as identified by management and or security will not be allowed to enter the business's premises.

[111] In the Committee's view, the addition of this option recognizes progress has been made and it may be less financially onerous on the Appellant. The regular periodic presence of security will continue to provide a deterrent effect throughout the day and night and the 24 hour on-call requirement may facilitate prompt reliable remedial action lessening the need to call on police resources and ultimately a reduction of the inordinate number of problematic, potentially violent occurrences on the premises.

[112] The Committee heard that requiring government identification from all guests can be practically problematic. It also discourages all patrons and that the purpose of this condition be easily circumvented given the open parking area and layout of the premises. Therefore, the Board has decided to alter condition 3. The existing condition 3 is deleted and replaced with the following:

3. Admittance of Guests

- a. The legal names of all guests must be provided at check in and at least one guest per room must present valid government-issued photo identification upon registering;
- b. All vehicles associated with any guests must be documented at check-in and updated if a change in vehicles occurs;
- c. All motel stays must be booked through the motel directly and the motel will not allow guests to sublet the premises.

[113] The Committee sets the term of the Business Licence at one year (**expires April 20, 2023**) to commence on the date of the issuance of this decision.

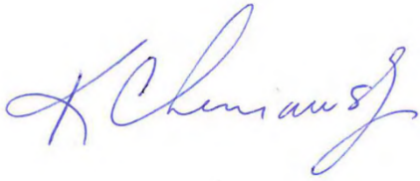
[114] The Appellant repeatedly expressed frustration with the current situation and a desire to find solutions. The EPS also professed an openness to meeting face to face with the Appellant to explore more effective solutions to the ongoing problems occurring on and around the premises. The Committee reiterates the comments from the Decision on this point: while the City cannot bind EPS, if the capacity to meet exists then, meeting with EPS may be beneficial to address public safety concerns at the premises and improving the situation for all interested parties.

[115] The Committee noted that a Crime Prevention Through Environmental Design (CPTED) assessment was not a suggested condition. CPTED assessments were not raised at the hearing and no evidence was provided that this avenue has been pursued to date. If not, the Committee is of the view that the Appellant may well demonstrate his commitment and improve the viability of the business as well as the safety of the premises and neighbouring areas by seeking a CPTED assessment prepared by a qualified security consultant, or similar professional.

[116] Finally, the Committee notes that either the Appellant or the City Manager's duly authorized delegate have opportunities under the Bylaw to revisit the conditions imposed by the Committee on the Business Licence. If the downward trend ends and there is a material increase in social disorder or calls for police resources, the City Manager's delegate may impose more onerous conditions up to and including requirement for 24 hour on-site security or revocation of the Business Licence following a Licence Review per section 24 of the Business Licence Bylaw. Conversely, if the Appellant continues to manage long term guests and to implement other good business practices the situation

may continue to improve. If calls for police resources continue to fall substantially and come more into line with the average, then the Appellant may apply to have conditions relaxed or removed per section 28(2) of the Business Licence Bylaw. In any event, the Business Licence will be subject to a Licence Review in the normal annual renewal process in one year's time.

- [117] For all of the above reasons the appeal is allowed in part, this Business Licence is renewed for a one year term (**expires April 20, 2023**) and Condition 2 and Condition 3 are deleted and replaced as indicated in this decision.

A handwritten signature in blue ink, appearing to read "K. Cherniawsky".

Kathy Cherniawsky, Chair
Community Standards and Licence Appeal Committee