

EDMONTON
COMMUNITY STANDARDS AND LICENCE APPEAL COMMITTEE

Citation: v Community Standards and Neighbourhoods (City of Edmonton),
2022ABECSLAC 10010

Date:	July 22, 2022
Order Number:	429058313-001
CSLAC File Number:	CSLAC-22-010

Between:

and

The City of Edmonton, Community Standards and Neighbourhoods

Committee Members

Kathy Cherniawsky, Chair
Don Fleming
Karen Munro

DECISION

- [1] On July 12, 2022, the Community Standards and Licence Appeal Committee (the “Committee”) heard a request for review of an Order. The request for review was filed on June 17, 2022 and concerned the decision of Community Standards and Neighbourhoods to issue an Order pursuant to Section 545(1) of *Municipal Government Act*, RSA 2000, c M-26 (the “*Municipal Government Act*”). The Order was dated June 16, 2022 and was delivered to the property owner(s) in person on the afternoon of Thursday, June 16, 2022. A copy of the Order was sent out by registered mail on Monday, June 20, 2022. The Order required the following action:

Remove all live poultry from your property, and further refrain from possessing and/or caring for poultry on your property without a licence. Alternatively, you may surrender the poultry to the City of Edmonton.

YOU MUST COMPLY WITH THIS ORDER BEFORE: July 24, 2022

- [2] The subject property is located at 10647-74 Street NW, Edmonton, AB.
- [3] The hearing on July 12, 2022 was held in-person along with written submissions. The following documents were received prior to the hearing and form part of the record:
- Copy of the Order issued pursuant to the *Municipal Government Act*;
 - The Appellant's written request for review and submission; and
 - The Respondent's written submission, including a series of photographs.

Preliminary Matters

- [4] 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.
- [5] The Chair outlined how the hearing would be conducted, including the order of appearance of parties. The Chair disclosed she had previously worked with one of the neighbours three years ago. No concerns or objections to the composition of the panel were raised.
- [6] The appeal was filed on time, in accordance with Section 547 of the *Municipal Government Act*.

Summary of Hearing

i) *Position of the Applicant,*

- [7] The Applicant started keeping the chickens as a hobby this year. It was always his intention to comply with all legal requirements.
- [8] He incubated the chickens at home and the eggs hatched at the end of February. On February 27, 2022, he took a course to understand the process of keeping chickens.
- [9] The Applicant physically dropped off all required documents (including his Premises Identification (PID) number) to obtain a licence at the City of Edmonton on March 31, 2022. He later received a telephone call requesting that he submit an electronic copy of the license application and complied with the request. He does not understand why he received notification from Mr. Wilson that he would never be allowed to have chickens on his property because all of the necessary documents for a license have been provided.
- [10] Early April 2022, a Municipal Enforcement Officer, escorted by two Edmonton Police Service officers, visited the property with a warning that all hens be removed within two days. The Applicant was advised that the direction came from J. Wilson, the Director of the Animal Care and Control area. Mr. said that no answer was provided as to why two

police officers accompanied the Municipal Enforcement Officer; his wife found their presence intimidating.

- [11] At the time of the April 2022 visit, the chickens were only five weeks old and it was not possible to determine which birds were hens and which were roosters. Therefore, it is impossible to comply with the Order as it is written.
- [12] The Municipal Enforcement Officer suggested that the Applicant dispose of the birds. The Applicant took them outside of the City of Edmonton into the forest and attempted to kill them, but found it too emotionally stressful. Ultimately, he brought them back home, put them into his garage and kept them there for three to four weeks. In the meantime, he obtained a development permit to build a chicken coop to the City's standards and that structure was approved.
- [13] Mr. Wilson is acting in retaliation towards the Applicant because the Applicant questioned his ability to know the difference between chicks and hens. At the moment, the chickens are still at the Applicant's property and very well cared for. It was very exciting when they produced their first egg yesterday.
- [14] He thought he had six hens, but very recently discovered that one bird was actually a rooster. He gave the rooster to a friend and received another hen in exchange for the rooster. He is now in compliance with the City bylaw.
- [15] The only issue is the attitude of J. Wilson and the fact that he is holding all of the documents and not issuing the required licence.
- [16] The Applicant provided the following responses to questions from the Committee:
 - a) The chickens are kept in a double fenced area and there is no way they can cross into the neighbours' yards.
 - b) He has not appealed the licence decision of refusal as he was not aware that there was a process to do so.
 - c) He confirmed that he had five hens and one rooster but gave the rooster to a friend of his in exchange for a chicken. There are currently six hens on his property.
 - d) There was only one incident where his hens got onto the neighbours' property. He let the chickens out of the patio door for some fresh air and freedom without realizing they were capable of going through the hedge and onto the neighbours' property.
 - e) The Order is improper because he is being asked to kill the chickens. They are not only chickens, but are also his pets. It is his understanding that there is a provision to have pets in your house.
 - f) He confirmed his application was to keep six chickens.

ii) *Position of the Respondent, City of Edmonton, Community Standards*

- [17] T. Courtoreille, Coordinator, Animal Care and Park Rangers Section, appeared on behalf of the City of Edmonton. He was accompanied by J. Watson, the Operations Coordinator for the section.

T. Courtoreille

- [18] A complaint was received on April 5, 2022 regarding poultry at the subject site and upon review it was found that a licence application had not yet been approved. A Peace Officer attended the site on April 6, 2022 to meet with [redacted] and observed poultry through the windows. [redacted] advised they were being kept as pets.
- [19] The Officer explained that poultry was a prohibited animal and residents were not allowed to keep poultry on their property without a licence. A warning notice was issued requesting that the poultry be removed within 48 hours.
- [20] [redacted] indicated that a licence application had been submitted. As the application was still in the queue and had not yet been processed, further enforcement action was put on hold.
- [21] In the following weeks, multiple complaints were received, including through the City Councillors' office, of poultry not being supervised properly and being outside of the property. T. Courtoreille referred to the video from a neighbour (which was included in the City's submissions) of [redacted] entering the neighbours' property without permission to corral the chickens back to his own property.
- [22] It is T. Courtoreille's opinion that the poultry is being kept in unsafe conditions and they are creating nuisance conditions on neighbouring properties.
- [23] [redacted] licence application was denied by J. Wilson on May 6, 2022. Justification for the refusal focused on the Applicant's ability and willingness to comply with the regulations of the *Animal Licensing and Control Bylaw 13145*.
- [24] Additional time was provided to comply with the *Bylaw* and a Notice of Entry was issued to do a site inspection between June 9, 2022 to June 11, 2022 to assess compliance. On that date, at least one of the six chickens was on the property outside of the coop.
- [25] On June 16, 2022, Municipal Enforcement Officer R. Moore attended the property and served a section 545(1) *Municipal Government Act* order for failure to comply with Section 27 of the *Animal Licensing and Control Bylaw*:

27 (1) No person shall keep or have any of the following on any premises with a municipal address in the City:

.....

(b) poultry;

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unless that person has a Licence issued by the City Manager to do so.

- [26] Based on the documents submitted, including the June 16, 2022 photographs and video submissions from residents, it is clear that section 27 of the *Animal Licensing and Control Bylaw* has been contravened. They are asking the Committee to uphold the Order.
- [27] The Order was properly issued by a designated officer as per Section 545(1) & (2)(b) of the *Municipal Government Act*.

545(1) If a designated officer finds that a person is contravening this or any other enactment that the municipality is authorized to enforce or a bylaw, the designated officer may, by written order, require the person responsible for the contravention to remedy it if the circumstances so require.

(2) The order may

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(b) direct a person to take any action or measures necessary to remedy the contravention of the enactment or bylaw, including the removal or demolition of a structure that has been erected or placed in contravention of a bylaw, and, if necessary, to prevent a re-occurrence of the contravention;

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J. Watson

- [28] On March 23, 2022 one of the Applicant's neighbours sent an email to Councillor Salvador's office which was subsequently forwarded to J. Watson. This is the first complaint she was aware of.
- [29] On March 28, 2022, J. Watson received an email from 311 requesting her to call the Applicant to answer some questions and explain the process required to apply for an urban hen licence. She had a 45 minute telephone conversation with that same day. During this call, the Applicant confessed that he had incubated 15 poultry in his house over the winter and 12 had survived. At this time, confirmed he did not have a coop and run and the poultry was being kept in a box in the garage.
- [30] After this telephone conversation, J. Watson sent an email to T. Courtoreille and J. Wilson to see if an application had been submitted and did not find anything.
- [31] On April 1, 2022, submitted his application for an urban hen licence to the development permit section which is the incorrect department. When J. Watson followed up with the Applicant, he advised her that he had dropped his application off in person with Development Services, 2nd Floor, Edmonton Tower at the mailroom. She explained

to him that all applications must be done electronically and this electronic process included notification letters that must be sent to inform neighbours.

- [32] electronic application was received on April 5, 2022 and on April 7, 2022, one of the administrative staff noticed that the PID number was missing from the electronic application. J. Watson explained that a PID number is required to register each bird with the Alberta Government in case a bird passes away or becomes ill.
- [33] Either three or six hens can be applied for. She is not sure if the hens are tagged, but if a hen passes away or is traded for another bird, a new number must be obtained.
- [34] While said he had six hens on the premises, to her knowledge he had at least 10. When she first spoke to him, he admitted to having 12 in a cardboard box in the garage.
- [35] When they received his PID number on April 11, 2022, had not yet received his approval from Development Services for his coop and hen run - that approval was received on April 18, 2022.
- [36] Because of the Order and the on-going investigation regarding the number of hens and their health, the urban hen keeping licence application was put on hold. Subsequently the application was denied.
- [37] The Respondents provided the following responses to questions from the Board:
- a) The Applicant has received the required permit for his coops; however he has not received the required municipal urban hen keeping licence.
 - b) Six PID numbers are required if he has six chickens; this is the maximum number of hens permitted. On April 18, 2022, information and videos received from neighbours demonstrated that there were 10 chickens on the property.
 - c) The April 5, 2022, email from J. Watson to T. Courtoreille prompted the initial investigation and resulted in the officer attending the subject property to investigate. However, further enforcement action was put on hold when they learned an application for a licence had been submitted. There was some confusion as to when the Applicant had submitted the PID numbers to the City.
 - d) The decision to refuse the licence application was not issued until May 6, 2022. Enforcement action was further held off after the refusal to see if an appeal would be filed. The Order issued on June 16, 2022, had a compliance date of July 24, 2022.
 - e) They are not aware of any time limitation for appealing a licence or if there is a waiting period before a person can re-apply for a licence.
 - f) has made repeated references to being forced to slaughter the chickens. The Respondents did not want that to happen either and therefore provided ample time for

the Appellant to make alternate arrangements prior to undertaking enforcement action.

- g) The Respondents also needed time to consult with various other organizations (should the poultry come into their possession) given the recent severe outbreak of Avian flu.
- h) Normally a person should have all approvals in place prior to bringing chicks onto their property.
- i) They have received multiple complaints of chickens escaping from the property - not just one.
- j) Enforcement action of an Order issued or affirmed by this Committee is typically not taken until 30 days after the written decision is released with an additional 7 days for mailing.

iii) Position of Affected Property Owners

- [38] They first became aware of the poultry on the property around February 21, 2022. Numerous photographs and videos were submitted to the Community Standards Section. They submitted seven photographs and one video dated May 10, 2022, May 21, 2022, June 22, 2022 and July 3, 2022 to this Committee and had assumed all the other materials would have been available to the Committee.
- [39] Their major concern is for the safety of the chickens who run around unsupervised most of the time when the s are not home. The front and back gates to the yard were left open on numerous occasions.
- [40] The subject site is right by the river valley which is home to coyotes, weasels and birds of prey which could pose a risk to chickens.
- [41] has heard distressed chickens on several occasions as one or more of them were outside of the coop and run and outside of the white picket fence unable to get back in.
- [42] They first noticed the chickens loose on April 17, 2022. The birds were under the spruce tree in their front yard. The neighbour across the street also saw the loose chickens and commented that it would be a shame if they got run over. At that time, told this neighbour that he had 10 chickens.
- [43] The Applicant's chickens were found on 's property on at least four occasions. The videos and photos submitted confirm some of these occasions.
- [44] Back in February, they submitted a picture of incubating eggs. At first they thought it was a terrarium because is an avid gardener.

- [45] On many occasions, the have left their chickens unsupervised in the picketed area in their backyard with either the front or back yard gate left open. Just this past Sunday, July 10, 2022, heard four chickens outside of the picketed area heading towards the open front gate.
- [46] On May 31, 2022 and June 19, 2022, children were allowed to chase the chickens inside the picketed area for 15 to 20 minutes which caused the chickens to be distressed. The first time no adults were present and the second time adults were in the backyard but did not put a stop to the activity.
- [47] The chickens are often loose in the Applicant's backyard. On many occasions they have heard a distressed chicken outside of the white picket fence and have observed it to be unable to get back in. Often no one appears to be home at the residence to intervene. They are aware that chickens were left unsupervised on many dates, specifically: May 25, June 11, June 12, June 22, June 26, June 27, July 2, July 3, July 4, July 6, July 8, and July 9.
- [48] The were not home from May 20 to May 23, 2022, inclusive. During this time, a friend arrived in the morning to let the chickens out of the coop into the picketed area where they remained unsupervised until she returned in the evening to put them back in the coop.
- [49] As per the *Bylaw*, poultry must be supervised if they are outside of the coop or the run and they believe the Order should be upheld.
- [50] They called Bylaw Enforcement on March 21, 2022, but did not lodge a complaint at that time.
- [51] On March 22, 2022, at 5:50 a.m. deposited a letter of intention into their mailbox. That is the first they were advised of his intention to keep chickens.
- [52] has lived at her home for 38 years and has been her neighbour for 31 years. is an intelligent man and a hard worker. He always has a project on the go such as gardening or wood working. However, he can be manipulative and he does not care about, or is naive concerning bylaws.
- [53] There have been on-going challenges between the Applicant and his neighbours to the south in the form of intimidation and harassment and was charged and convicted of mischief. His conditions expired in January of this year which was when the trouble started again.
- [54] She noticed at the end of February that the Applicant had started another woodworking project and she assumed he planned to apply for the urban hen program. She subsequently made herself familiar with the requirements of this program.

- [55] approached her on March 21, 2022 and verbally advised her of his urban hen application intentions. advised the Applicant she would oppose his application as he had not been a good neighbour over the last 10 years, had gone out of his way to harass and annoy his neighbours to the south and had committed numerous bylaw violations. While was not the direct target of the Applicant's behaviour, she was still drawn into the issues. claimed his behaviour was a result of his neighbours to the south - he did not accept any personal responsibility.
- [56] wrote a letter to her City Councillor because it was difficult to reach anyone in the urban hen program during the covid lockdown.
- [57] knew had been incubating eggs in his house and on March 23, 2022, appeared on the front driveway with three young pullets on a mat.
- [58] is always looking for attention and the chickens have provided him numerous opportunities to talk to neighbours, both in the front and back of his property. He goes into great detail discussing his birds with neighbours and takes much pride in his chickens. Three days ago she heard him tell someone that he had nine birds on the property.
- [59] When the pullets were less than 12 weeks old, the backyard was not yet fenced at all.
- [60] The subject site is one block from the river valley. Coyotes and weasels are commonly seen and there has been a significant increase in the amount of corvids that roost there.
- [61] kept the birds inside of his house prior to the chicken coop being completed. She believes he was sleeping in the same room as the pullets. contacted Alberta Health as she was concerned this was not a good health practice, especially with the recent outbreaks of Avian flu.
- [62] Initially had a run at the front of his house with a 22 inch high fence. reported this to 311 as it is illegal to have a run in the front yard. moved the fencing around but fencing remains that straddles a significant length of property, although all birds are currently in the backyard.
- [63] has a very large chicken coop in his backyard which is positioned so that she cannot see very much; however, she is aware of the times when the birds are in the backyard with no one home.
- [64] Over the last ten years, there have been many occasions when has violated guidelines and bylaws and made light of it with the neighbours.
- [65] is concerned that the Applicant is keeping the chickens as pets. They should not be there due to health issues and danger from other animals. doubts that the Applicant will obey any order or decision. He will simply hide the birds when people come out to do inspections. It is not in the best interest of the birds to be there.

- [66] She takes issue with the comment that the City was intimidating his wife by having the police come with the enforcement officer at the time the Order was issued. The police have visited on many occasions as bylaw violations are not an uncommon occurrence at that property.
- [67] The birds have been in the front yard on more than one occasion. She does not think they are pets although they have been treated that way.
- [68] The only concerns expressed with the City of Edmonton was the significant delays there have been in dealing with this matter thus far. She is concerned that the birds could remain there for another 37 days. She is also concerned about potential retaliation from the Applicant.

iv) Rebuttal of the Applicant

- [69] Just because the s are not outside does not mean the chickens are unsupervised. They are able to watch the chickens through the windows. questions how the neighbours know if they are home or not.
- [70] The chickens are not in danger and have three levels of protection: the chicken run which is more than the required size; a white fence that gives them half of the backyard; and, the fence around the yard. He can do no more.
- [71] Winter can be a depressing time, especially with Covid. started the chicken project somewhere at the beginning of February so he could think about springtime.
- [72] It was the Applicant's intention from the beginning to build a hen coop and comply with every aspect of the City *Bylaw*.
- [73] He is being forced to kill the chickens and in desperation he has appealed to the mayor and his City Councillor. The department he is dealing with is the department of animal care, not animal slaughter.
- [74] He referred to an email in his submissions showing he successfully applied for and received his PID number. He received another email on April 7, 2022 from "Rosalie" with the City of Edmonton hens and chickens program advising him that his application for a licence was complete. One hour after the email from Rosalie he was advised by J. Wilson that his application was on hold due to an investigation. The Applicant has still not received an answer as to what type of an investigation it is.
- [75] It is in the best interests of the chickens to leave them with the Applicant. He would like the harassment to stop.
- [76] He acknowledged that some children had chased the chickens, but it was fun to watch. The chickens are not in distress and one let out a happy call because she laid her first egg.

v) *Rebuttal of the Respondent - City of Edmonton, Community Standards*

- [77] It is abundantly clear that the poultry was obtained prior to obtaining a licence. They have concerns about the Applicant's ability to properly look after poultry.
- [78] The welfare and safety of the poultry is in question. Scenarios such as this where poultry is not properly caged will attract predators such as birds, weasels and coyotes. Also there has been a negative impact on the surrounding community.
- [79] The Respondent requests that the Order be upheld.

vi) *Applicant's Final Comments*

- [80] The Applicant declined the opportunity to provide further comments.

Decision

- [81] The Order is confirmed as issued on June 16, 2022.

Reasons for Decision

- [82] This is a review of an order issued to the Applicant pursuant to section 545(1) of the *Municipal Government Act* (the "*Act*") which provides that if a designated officer finds that a person is contravening this or any other enactment that the municipality is authorized to enforce or a bylaw, the designated officer may, by written order, require the person responsible for the contravention to remedy it if the circumstances so require.
- [83] Section 547 of the *Act* enables any person who receives this type of order to request a review of that order to be heard by council.
- [84] In section 8(1)(b) of the *Community Standards and Licence Appeal Committee Bylaw, Bylaw 19003*, Edmonton City Council delegated its authority under section 547 of the *Act* to conduct a review of the Order and to then confirm, vary, substitute or cancel it to this Committee.
- [85] The Order under review is dated June 16, 2022 and states in part:

As a result of an inspection of the property on June 09, 2022:

Being an employee of the City of Edmonton having the delegated power, duties, and functions of a designated officer for the purposes of section 545, I find that you are in contravention of The City of Edmonton Animal Licensing and Control Bylaw, Section 27 possession of prohibited animals on private property without a licence.

YOU ARE THEREFORE ORDERED TO:

Remove all live poultry from your property, and further refrain from possessing and/or caring for poultry on your property without a licence. Alternatively, you may surrender the poultry to the city of Edmonton.

YOU MUST COMPLY WITH THIS ORDER BEFORE: July 24, 2022

- [86] The Order alleges a contravention of section 27(1) of the Animal Licensing and Control Bylaw, Bylaw 13145 has occurred on the premises. Section 27(1) of the *Bylaw* states:

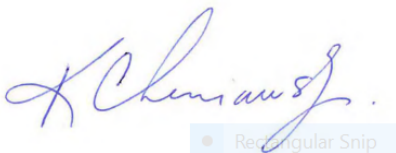
No person shall keep or have any of the following on any premises with a municipal address in the City:

- (a) a Large Animal or the young thereof;
- (b) poultry;
- (c) bees; or
- (d) poisonous snakes, reptiles or insects.

unless that person has a Licence issued by the City Manager to do so.

- [87] Based on the submissions of the Applicant and his neighbour, this review is occurring within the larger context of other issues amongst the neighbours. The Committee notes that many of the submissions dealt with past actions of the Applicant, his propensity to adhere or not to Bylaw provisions, the merits of issuing him a licence to keep hens. The Board did not find these submissions particularly relevant or persuasive with respect to the issue at hand which is whether or not the Order was validly issued and should be confirmed, or alternatively varied, substituted or canceled.
- [88] The evidence submitted by the Applicant, his neighbours and the City officials all confirms that there were indeed poultry (specifically, chickens numbering at least 6) being cared for at the subject property from March 2022 and up to the date of the hearing. Therefore, the Committee finds that poultry were being kept on the premises on the date of inspection and the date of issuance of the Order.
- [89] The evidence is clear that the Applicant has never obtained a licence from the City of Edmonton authorizing poultry of any description to be kept on the premises. The Applicant himself submitted a copy of the written decision dated May 6, 2022 refusing his application for a permit to keep hens. Therefore, the Committee finds that poultry were being kept on the premises on the date of inspection and the date of issuance of the Order without a licence contrary to section 27(1) of the *Bylaw*.

- [90] Based on these findings, the Committee concludes that the Order was validly issued on June 16, 2022.
- [91] The Committee also considered the compliance deadline of July 24, 2022.
- [92] The Committee finds that the Applicant was well aware of the need for an approved animal licence at the latest as of March 23, 2022 when he discussed the matter with his neighbour. Indeed, the Applicant himself indicated he had taken formal instruction about hen keeping in February and had submitted an application for a licence on March 31, 2022 several weeks after the poultry had hatched.
- [93] Given this timeline, the Committee finds that the compliance date of July 24, 2022 is reasonable and appropriate. It provided, and still provides, ample opportunity for the Applicant to comply.
- [94] In making this decision about the deadline for compliance, the Committee is also mindful of the serious concerns raised by the neighbours and City officials that continuing to allow the poultry to remain on the premises may present health and safety issues for the poultry and for other birds which are exacerbated by the Avian flu outbreak and the proximity to the river valley with known predators; and also presents a nuisance for neighbouring property owners.
- [95] For all of these reasons, the Committee upholds the Order as issued.



Rectangular Snip

Kathy Cherniawsky, Chair
Community Standards and Licence Appeal Committee

Important Information for the Appellant

1. A person affected by this decision may appeal to the Alberta Court of Queen's Bench under Section 548 of the *Municipal Government Act*, RSA 2000, c M-26 if the procedure required to be followed by this Act is not followed, or the decision is patently unreasonable.

EDMONTON
COMMUNITY STANDARDS AND LICENCE APPEAL COMMITTEE

Citation: v Community Standards and Neighbourhoods (City of Edmonton), 2022
ABECSLAC 10012

Date: July 22, 2022
Order Number: 413552188-001
CSLAC File Number: CSLAC-22-012

Between:

and

The City of Edmonton, Community Standards and Neighbourhoods

Committee Members

Kathy Cherniawsky Chair, Chair
Don Fleming
Karen Munro

DECISION

- [1] On July 12, 2022 the Community Standards and Licence Appeal Committee (the “Committee”) heard a request for review of an Order that was filed on June 17, 2022. The request for review concerned the decision of Community Standards and Neighbourhoods to issue an Order pursuant to Section 545(1) of *Municipal Government Act*, RSA 2000, c M-26 (the “*Municipal Government Act*”). The Order was dated June 3, 2022 and was mailed on June 6, 2022 and required the following action:

Remove all GRAFFITI displayed on the building and/or structure that is visible from any surrounding property.

Pink Graffiti on the North Wall with Mural

YOU MUST COMPLY WITH THIS ORDER BEFORE: June 28, 2022

- [2] The subject property is located at 8232 - Gateway Boulevard NW, Edmonton.
- [3] The hearing on July 12, 2022 was held in-person along with written submissions. The following documents were received prior to the hearing and form part of the record:
- Copy of the Order issued pursuant to the *Municipal Government Act*;
 - The Appellant's written request for review and submission; and
 - The Respondent's written submission, including a series of photographs.

Preliminary Matters

- [4] 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.
- [5] The Chair outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [6] The appeal was filed on time, in accordance with Section 547 of the *Municipal Government Act*.

Summary of Hearing

i) Position of the Applicant, 2379392 Alberta Inc.

- [7] , one of the business owners, appeared to represent 2379392 Alberta Inc. The Order threatening a \$10,000 fine or imprisonment was forwarded to him by his landlord.
- [8] The art work on the outside of the building was originally done by an artist from Los Angeles. unsuccessfully reached out to the artist regarding the possibility of a repair. The mural is worth well over \$30,000.
- [9] It appears that a fire extinguisher was filled with paint and was sprayed on the mural in the middle of the night, causing the eyesore.
- [10] Last year he submitted all required documentation to the Capital City clean-up program to address the problem, as recommended by the City of Edmonton. When he finally received a response from this program, he was informed that a new year had started and he would have to re-submit everything again.
- [11] He appreciates that the bylaws are in place to keep the area clean and presentable; however, the Applicant and his business partner have spent thousands of dollars out of their own pockets over the last two years making repairs to the mural. Now he will have to spend more money and he has no doubt that it will not be the last time.
- [12] In addition to costs for repairing the mural, the Applicant and his partner have been forced to spend thousands of dollars maintaining the garbage enclosure behind the patio. The doors are constantly being ripped open and garbage is spewed everywhere. An

option to provide moloks was presented by the City but this would result in all of the tenants having to pay a rental fee to the City - another added expense.

- [13] The Applicant cannot continue to pay for damage that occurs over which he has no control. He has spent over \$40,000 in repairs over the last two years. He does not know what the solution is. He is looking for some support.
- [14] The estimated cost to repair the current damage is approximately \$5,000.00. A possible solution would be to paint the entire side of the building black which would make it much cheaper to make repairs in the future, but would also destroy the mural.
- [15] The Applicant provided the following responses to questions from the Board:
- a) Under his lease, he is responsible for keeping the building graffiti free. The Landlord has offered to help pay for the damage although this would ultimately be charged back to him in the form of increased common area charges.
 - b) The Capital City clean-up program has offered to pay \$750.00 towards the clean-up. The balance would be the Applicant's responsibility. The Business Association is sympathetic to the situation and wants the mural restored.
 - c) While the mural adds value to the business, the Applicant cannot continue to foot the bill for repairs every time the art work is damaged. The best course of action may be to paint over it. While no one wants this to happen, cannot continue to keep constantly paying out of pocket.
 - d) does not know how much it would cost to paint over the mural with a solid colour but he believes it would be much cheaper than repairing the existing mural.
 - e) He acknowledged that while painting the wall black may create a blank canvas, graffiti is already happening.
 - f) He is unable to comply with the Order by the date requested and requires at least another 30 days from today.

ii) Position of the Respondent, C. Perizzolo

- [16] Ms. C. Perizzolo, Acting Coordinator, Complaints and Investigations, appeared on behalf of the City of Edmonton. She was accompanied by T. Knister, one of their supervisors.
- [17] She noted that the Appellant does not disagree that there has been a contravention of section 9 of the *Community Standards Bylaw* and he has acknowledged that graffiti is present. Therefore, C. Perizzolo did not go through the details of their investigation.

- [18] Community Standards is open to working with the Appellant and the property owner regarding this Order. While there is an existing mural program, it is not available at the moment.
- [19] The Respondents provided the following responses to questions from the Board:
- a) They are comfortable with extending the compliance date of the Order to the end of September, 2022. After that the weather would not be warm enough for proper removal.
 - b) Everyone appears to want the same outcome - have the graffiti removed and have the artwork remain.
 - c) The Respondents have reached out to the executive director with the Strathcona Business Association to see if additional help could be provided in addition to the funds offered by the Capital City clean-up program.
 - d) Graffiti is defined in the Bylaw and imports the idea of consent. If alterations are made to a portion of a mural, this would not be considered graffiti because the image is not being destroyed.
 - e) Some building owners paint only the bottom portion of their building since this is where graffiti is most likely to occur and they apply a coat of graffiti protection.
 - f) T. Knister will be taking care of this file and can contact him going forward.

iii) Rebuttal of the Applicant

- [20] The Applicant has had a good relationship with both T. Knister and C. Perizzolo. He is just tired of costs being passed on to him.
- [21] While the landlord has offered to help pay for the repairs, it ultimately just gets passed on to him as additional rent.
- [22] The Old Strathcona Business Association contacted the Applicant to see when the mural was going to be repaired but did not offer any monetary assistance.
- [23] He would appreciate an extension to the compliance date as he does not have time to deal with the issue right away.

Decision

- [24] The Order is Confirmed. The compliance date of the Order is varied to September 30, 2022.

Reasons for Decision

[25] This is a review of an order issued pursuant to section 545 of the *Municipal Government Act* identifying pink graffiti on the north wall of the subject building - a nuisance contrary to the *Community Standards Bylaw 14800* - and requiring its removal.

[26] Section 545 of the *Municipal Government Act* states:

545(1) If a designated officer finds that a person is contravening this or any other enactment that the municipality is authorized to enforce or a bylaw, the designated officer may, by written order, require the person responsible for the contravention to remedy it if the circumstances so require.

(2) The order may

- (a) direct a person to stop doing something, or to change the way in which the person is doing it;
- (b) direct a person to take any action or measures necessary to remedy the contravention of the enactment or bylaw, including the removal or demolition of a structure that has been erected or placed in contravention of a bylaw, and, if necessary, to prevent a re-occurrence of the contravention;
- (c) state a time within which the person must comply with the directions;
- (d) state that if the person does not comply with the directions within a specified time, the municipality will take the action or measure at the expense of the person.

[27] Section 9 of the *Community Standards Bylaw 14600* states:

- (1) A person shall not cause or permit a nuisance to exist in respect of any building or structure on land they own or occupy.
- (2) For the purpose of greater certainty a nuisance, in respect of a building or structure, means a building or structure, or any portion thereof, showing signs of a serious disregard for general maintenance and upkeep, whether or not it is detrimental to the surrounding area, some examples of which include:
 - (a) ... ;
 - (a.1) any **graffiti** displayed on the building or structure that is visible from any surrounding property;...

[28] The Applicant requested this review because he has become understandably exasperated by being called upon repeatedly to remedy vandalism and graffiti on the subject property and frustrated with municipal administrative procedures. He has concluded it would be

more economical to cover a two storey mural with plain black paint than to restore it. The Committee is not unsympathetic to the Applicant's predicament, but notes it is not a basis upon which the Order may be invalidated.

- [29] As the Applicant agreed with the City that the pink paint splattered on the mural falls within the meaning of graffiti as defined in section 2(a.1) of the *Bylaw*, the Committee finds that the pink paint constitutes a nuisance which is prohibited by section 9.
- [30] Therefore, the Committee concludes that the Order was properly issued.
- [31] The Committee next considered the propriety of the date for compliance stated in the Order and has decided to substitute September 30, 2022 for the following reasons:
- a) The specified date passed prior to the hearing.
 - b) The Applicant indicated he would need 30 days to remove the graffiti and either restore the mural or cover it with black paint.
 - c) The City officials agreed that an extension to September 30, 2022 would be acceptable and may facilitate a mutual desire to preserve the mural and protect it from future defacement.
- [32] For all these reasons, the Committee confirms the Order with the substitution of September 30, 2022 as the date of compliance.



Kathy Cherniawsky, Chair
Community Standards and Licence Appeal Committee

Important Information for the Appellant

1. A person affected by this decision may appeal to the Alberta Court of Queen's Bench under Section 548 of the *Municipal Government Act*, RSA 2000, c M-26 if the procedure required to be followed by this Act is not followed, or the decision is patently unreasonable.

EDMONTON
COMMUNITY STANDARDS AND LICENCE APPEAL COMMITTEE

Citation: v Community Standards and Neighbourhoods (City of Edmonton), 2022
ABECSLAC 10013

Date:	July 27, 2022
Order Number:	433181764-001
CSLAC File Number:	CSLAC-22-013

Between:

and

The City of Edmonton, Community Standards and Neighbourhoods

Committee Members

Kathy Cherniawsky, Chair
Don Fleming
Karen Munro

DECISION

- [1] On July 12, 2022, the Community Standards and Licence Appeal Committee (the “Committee” or “CSLAC”) heard a request for review of an Order that was filed on June 21, 2022. The request for review concerned the decision of Community Standards and Neighbourhoods to issue an Order pursuant to Section 545(1) of *Municipal Government Act*, RSA 2000, c M-26 (the “*Municipal Government Act*”). The Order was dated June 8, 2022 and was mailed on June 9, 2022 and required the following action:

Cut all long grass and weeds over 10 cm from the entire property.

YOU MUST COMPLY WITH THIS ORDER BEFORE: July 4, 2022

- [2] The subject property is located at 5635 - 201 Street NW, Edmonton.

[3] The hearing on July 12, 2022 was held in-person along with written submissions. The following documents were received prior to the hearing and form part of the record:

- Copy of the Order issued pursuant to the *Municipal Government Act*;
- The Appellant's written request for review; and
- The Respondent's written submission, including a series of photographs.

Preliminary Matters

[4] 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.

[5] The Chair outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.

[6] The appeal was filed on time, in accordance with Section 547 of the *Municipal Government Act*.

Summary of Hearing

i) Position of the Applicant,

[7] No one appeared on behalf of the Applicant.

[8] The Applicant's request for review was received on June 21, 2022 but no reasons for the request were provided.

ii) Position of the Respondent, C. Perizzolo

[9] Ms. C. Perizzolo, Acting Coordinator, Complaints and Investigations, appeared on behalf of the City of Edmonton. She was accompanied by T. Knister, one of their supervisors.

[10] A Municipal Enforcement Officer attended the site on May 11, 2022, in response to a citizen's complaint regarding an untidy and unsightly condition. The Officer observed multiple garbage bags, loose litter and chairs on the property. A Notice to Comply was issued on May 12, 2022.

[11] A follow-up inspection was conducted on June 7, 2022. The items listed on the Notice to Comply had been removed; however, long grass and weeds exceeding 10 centimeters were observed and three photographs were taken.

[12] Section 6 of the *Community Standards Bylaw 14600* states:

- (1) A person shall not cause or permit a nuisance to exist on land they own or occupy.

- (2) For the purpose of greater certainty a nuisance, in respect of land, means land, or any portion thereof, that shows signs of a serious disregard for general maintenance and upkeep, whether or not it is detrimental to the surrounding area, some examples of which include:

.

- (d) unkempt grass or weeds higher than 10 centimetres;

.

[13] As a result of the June 7, 2022 inspection, a section 545 *Municipal Government Act* Order was issued on June 8, 2022 requiring the Applicant to cut all long grass and weeds over 10 cm from the entire property by July 4, 2022.

[14] Section 545(1) of the *Municipal Government Act* states:

If a designated officer finds that a person is contravening this or any other enactment that the municipality is authorized to enforce or a bylaw, the designated officer may, by written order, require the person responsible for the contravention to remedy it if the circumstances so require.

[15] Two sets of photographs taken on June 7, 2022, and July 11, 2022 have been submitted to the Committee.

[16] The July 11, 2022 inspection showed the Order had been complied with and the investigation was concluded. A voicemail was left to advise the Applicant of options for today's hearing: either proceed with the hearing or withdraw the appeal. No response was received.

[17] The Respondents are satisfied that a contravention to section 6 of the *Community Standards Bylaw* has occurred and asked that the section 545 *Municipal Government Order* be upheld.

[18] The Respondents confirmed that compliance had been achieved even though the grass had not been trimmed around the tree and the house.

Decision

[19] The Order is confirmed as issued on June 8, 2022.

Reasons for Decision

[20] This is a review of a written Order issued by the City of Edmonton pursuant to Section 545(1) of the *Municipal Government Act* alleging a contravention of a City Bylaw.

- [21] CSLAC has the responsibility to review such orders pursuant to section 547(1) of the *Act* and sections 2(g) and 8(1) of *Community Standards and Licence Appeal Committee Bylaw 19003*.
- [22] Further, per section 547(2) of the *Act*, after reviewing an order, the Council (CSLAC) may confirm, vary, substitute or cancel it.
- [23] The Order is dated June 8, 2022 and issued to and at the subject property. It states in part:

As a result of an inspection of the property on June 07, 2022.

Being an employee of the City of Edmonton having the delegated power, duties, and functions of a designated officer for the purposes of section 545, I find that you are in contravention of the City of Edmonton Community Standards Bylaw 14600 Section 6(1)

YOU ARE THEREFORE ORDERED TO:

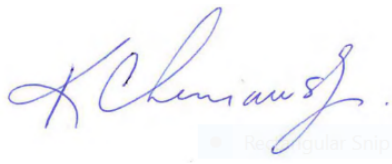
Cut all long grass and weeds over 10 cm from the entire property.

YOU MUST COMPLY WITH THIS ORDER BEFORE: July 04, 2022

- [24] The pertinent portions of section 6 of the *Community Standards Bylaw 14600* provide:
- 6 (1) A person shall not cause or permit a nuisance to exist on land they own or occupy.
- (2) For the purpose of greater certainty a nuisance, in respect of land, means land, or any portion thereof, that shows signs of a serious disregard for general maintenance and upkeep, whether or not it is detrimental to the surrounding area, some examples of which include:
- ...
- (d) unkempt grass or weeds higher than 10 centimetres;
- ...

- [25] The Applicant requested a review of the Order in a letter dated June 10, 2022. The administrative records with the Committee indicate that the letter was received on June 21, 2022 which is within the 14 day appeal period provided in Section 546(1) of the *Municipal Government Act*.
- [26] Based on the material before it, the Committee finds the Order was properly issued and upholds it as issued for the following reasons:

- a. The Committee received three photos dated June 7, 2022 showing the state of the front yard of the subject property. The Committee finds the photos of long grass gone to seed, quack grass and weeds in full bloom all in excess of 10 cm in height.
- b. Based on the photos, the Committee finds a nuisance condition in contravention of section 6(1) of the *Bylaw* existed on the premises at the time the Order was issued.
- c. The Applicant provided no reasons to support the request for review and no evidence to controvert the materials provided by the City officials. He did not appear before the Committee to provide any oral submissions.

A handwritten signature in blue ink, appearing to read "K. Cherniawsky". Below the signature, there is a faint, semi-transparent watermark that says "Regular Snip".

Kathy Cherniawsky, Chair
Community Standards and Licence Appeal Committee

Important Information for the Appellant

1. A person affected by this decision may appeal to the Alberta Court of Queen's Bench under Section 548 of the *Municipal Government Act*, RSA 2000, c M-26 if the procedure required to be followed by this Act is not followed, or the decision is patently unreasonable.