



COMMUNITY STANDARDS & LICENCE APPEAL COMMITTEE

AGENDA/SELECTION SHEET

July 12, 2018 – River Valley Room, City Hall

Call to Order

9:30 a.m.

Lunch

12:00 p.m. – 1:00 p.m.

Adjournment

4:30 p.m.

MEMBERS

M. Banga, J. Dziadyk, T. Caterina

ITEM		ACTION
1.	CALL TO ORDER AND RELATED BUSINESS	
1.1	Call to Order	
1.2	Adoption of Agenda	
1.3	Adoption of Minutes	
	<ul style="list-style-type: none"> June 14, 2018, Community Standards and Licence Appeal Committee meeting minutes 	
2.	EXPLANATION OF APPEAL HEARING PROCESS	
3.	COMMUNITY STANDARDS AND LICENCE APPEAL COMMITTEE MATTERS	
3.1	Appeal of Decision to refuse to issue a City of Edmonton's Driver's Licence under the Vehicle for Hire Bylaw 17400 to A. S. P. (File No. 080251498-001)	
3.2	Appeal of decision to impose conditions on Business Licence 107425872-001; 1370498 Alberta Ltd., o/a Nyala Lounge, 10875 - 98 Street NW	WITHDRAWN
4.	ADJOURNMENT	

View the interactive agenda at www.edmonton.ca/meetings



COMMUNITY STANDARDS AND LICENCE APPEAL COMMITTEE

MINUTES (DRAFT)

June 14, 2018 – Churchill Building

PRESENT

M. Banga, J. Dziadyk, T. Caterina

ALSO IN ATTENDANCE

S. McDonald, Office of the City Clerk
 C. Ashmore, Law Branch
 S. Neider, Office of the City Clerk
 I. Russell, Office of the City Clerk

TABLE OF CONTENTS

ITEM		PAGE	DECISION
1.	CALL TO ORDER AND RELATED BUSINESS	1	
1.1	Call to Order	1	
1.2	Adoption of Agenda	1	
1.3	Adoption of Minutes	2	
2.	EXPLANATION OF APPEAL HEARING PROCESS	2	
3.	COMMUNITY STANDARDS AND LICENCE APPEAL COMMITTEE MATTERS	2	
3.1	Appeal of Decision to Impose Conditions on Business Licence 107425872-001, 1370498 Alberta Ltd. o/a Nyala Lounge, 10875 - 98 Street NW	2	
4.	ADJOURNMENT	3	

DECISION SUMMARY

ITEM		DECISION
1.	CALL TO ORDER AND RELATED BUSINESS	
1.1	Call to Order	

Councillor Banga called the meeting to order at 9:47 a.m.

1.2	Adoption of Agenda	
-----	---------------------------	--

Moved T. Caterina:

That the June 14, 2018, Community Standards and Licence Appeal Committee Agenda be adopted

In Favour:

Carried

M. Banga, T. Caterina, J. Dziadyk

1.3 Adoption of Minutes

Moved T. Caterina:

That the May 3, 2018 Community Standards and Licence Appeal Committee meeting minutes be adopted.

In Favour:

Carried

M. Banga, T. Caterina, J. Dziadyk

2. EXPLANATION OF APPEAL HEARING PROCESS

Mr. C. Ashmore, Law Branch, provided information regarding procedural and preliminary issues.

Councillor Banga explained the hearing process and asked if anyone objected to any member of the Community Standards Licence Appeal Committee hearing the appeals. No one objected.

3. COMMUNITY STANDARDS AND LICENCE APPEAL COMMITTEE MATTERS

3.1 Appeal of Decision to Impose Conditions on Business Licence 107425872-001, 1370498 Alberta Ltd. o/a Nyala Lounge, 10875 - 98 Street NW

Mr. P. Alwis, Legal Counsel for the Appellant, advised the Committee his client was seeking a postponement of this hearing.

Ms. A. Goodwin, representing Renouf Professional Corporation, advised that they were opposed to a postponement due to public safety concerns.

Mr. C. Ashmore, Law Branch provided information and answered the Committee's questions.

The Committee allowed a short recess to allow Mr. P. Alwis to consult with his client.

The Committee met in private at 11:24 a.m. pursuant to Section 20 of The Freedom of Information and Protection of Privacy Act.

The Committee met in public at 11:48 a.m.

Moved T. Caterina

The hearing has been adjourned to Thursday, July 12, 2018.

The interim stay is immediately lifted and all conditions are in place immediately. Nyala Lounge must remain closed until all conditions are met. The Appellant shall submit disclosures by July 3, 2018. The Appellant must inform the Public Safety Compliance Team in writing, when all the conditions are met.

Details regarding the exact time and location of the hearing will be sent in future correspondence.

In Favour:

Carried

M. Banga, T. Caterina, J. Dziadyk

4. ADJOURNMENT

The meeting was adjourned at 11:49 a.m.

Chair

City Clerk



**EDMONTON
TRIBUNALS**

*Community
Standards &
Licence Appeal
Committee*

10019 – 103 Avenue NW
Edmonton, AB T5J 0G9
P: 780-496-5026 F: 780-496-8199
cslac@edmonton.ca
edmontoncslac.ca

Decision of the Committee

Appeal of Decision to Refuse to Issue a City of Edmonton Driver's Licence Pursuant to Section 42 of the *Vehicle for Hire Bylaw 17400* City File No. 080251498-00

Hearing Date: July 12, 2018

Appellant:

I. ISSUE

Should a Driver's Licence be issued to _____ pursuant to the Vehicle for Hire Bylaw?

II. APPEARANCES AND EVIDENCE

In dealing with this appeal, the Community Standards and Licence Appeal Committee (the Committee) heard from:

Appellant:

Adam Y. Karbani, Barrister & Solicitor

Respondent:

Ms. Wai Tse Ramirez, General Manager
Business Licensing, Inspections and Compliance

Ms. Nancy Jacobson, City of Edmonton Law Branch

Written Submissions:

- Record and Written Submission from the Respondent
- Written Submission and Rebuttal from the Appellant

III. SUMMARY OF APPELLANT'S POSITION

Mr. A. Karbani spoke on behalf of the Appellant, Mr. A. who was also present.

Mr. Karbani first provided some background information and advised that Mr. married in January of 2010 and his wife filed for divorce in March, 2018; divorce proceedings are currently ongoing. They have a 5 year old son and Mr. has provided \$480.00 per month child support for the past 18 months.

Mr. has been a taxi driver in the Edmonton area for the past 12 years (3 years in Sherwood Park and 8 years in Edmonton) and has never been charged with anything in relation to his employment.

Mr. pled guilty to two counts of simple assault and one charge of breaching recognizance which resulted in a stiff punishment of 75 days in jail in addition to two years of probation. The probation order ends in April, 2019.

The Appellant acknowledges that while the convictions are serious, they concern incidents of domestic assault and do not relate to his employment as a taxi driver. Section 33.1(1) of the Vehicle For Hire Bylaw could have stated that a person convicted of any violent offence may not drive a vehicle for hire but it explicitly states that the offence must be "related to the functions, duties, or business of a vehicle for hire or driver".

Mr. Karbani likened his client's position to that of an off-duty taxi driver being involved in a bar fight and pleading guilty to assault. This would not be related to the functions of a vehicle for hire driver and the bylaw was not intended to capture these types of incidents. On the other hand, charges of impaired or dangerous driving would be related "to the functions, duties, or business of a vehicle for hire or driver".

The Committee must consider the risk to the general public. Mr. is not a first time applicant and has an established 12 year track record as a professional driver with no incidents arising out of this employment. Mr. licence was not cancelled until April 30, 2018; therefore, he continued to drive after he pled guilty with no incidents arising. Mr. has never had any other charges laid against him and drugs or alcohol have never been an issue. There is nothing to indicate that Mr. poses a risk to the public.

His licence is important as it allows him to earn a living and to continue to provide child support. He is currently working as a driver for Domino's Pizza but earns significantly less than he did as a taxi driver. Mr. is prepared to comply with any conditions this Committee may choose to impose should his licence be re-instated such as installing a camera in his vehicle, driving only during specific times, and immediately advising the Vehicle for Hire Program Manager if he is charged with any offence under the Criminal Code or the Controlled Drug and Substances Act.

The Court Order includes a firearms prohibition for five years but the Appellants confirmed that no firearms were involved in the assault allegations.

The Appellant clarified that one incident of assault occurred inside the family home and the second in a vehicle with two other people present in the back seat. Mr. admitted that he slapped and hit his wife in both instances.

IV. SUMMARY OF RESPONDENT'S POSITION

Ms. Wai Tse Ramirez, General Manager of Business Licencing, Inspections and Compliance and Ms. N. Jacobsen, Law Branch, explained why the decision to deny Mr. application for a vehicle for hire driver's licence is reasonable and in the public's best interest.

The Vehicle for Hire Program and associated Vehicle for Hire Bylaw is how the City of Edmonton regulates businesses that transport passengers in exchange for a fee. The Bylaw prohibits a person from driving a vehicle for hire if that person, during the past 10 years, was convicted of any offence under the Criminal Code that is related to the functions, duties or business of a vehicle for hire. This includes any offence of a violent nature.

The Vehicle for Hire Program is a service to the public and it is reasonable to expect greater scrutiny in order to obtain a City of Edmonton driver's licence. The public expects that licencing decisions are made to ensure safe and reliable transportation services. The information provided in Mr. police information check raised a public interest concern. Applications are automatically refused if the driver has any type of criminal conviction within the past 10 years as per Section 33 of the Vehicle for Hire Bylaw which came into effect on July 15, 2017.

Due to administrative errors Mr. was granted a temporary six month licence from October, 2017, to April 30, 2018, which allowed him to drive when he was in contravention of the Vehicle for Hire Bylaw. Mr.'s temporary licence automatically expired on April 30, 2018. That is why he came in to renew his licence and his application was subsequently refused.

Ms. Jacobsen, Law Branch, clarified that Section 33.1 of the Vehicle for Hire Bylaw includes items (a) to (e) which specifically enumerate convictions automatically included as relating to the functions, duties or business of a vehicle for hire driver. Professional drivers must be held to a higher standard as they interact with the public in fairly confined spaces and that is why any violent offences must be considered as per Section 33.1(1)(a).

Other offences not itemized in this list could also be a reason for refusal. In these cases Ms. Ramirez would have to analyze to see if the offence relates to a vehicle for hire driver.

Drivers renew their licences for a period of either one or two years on their birthday.

V. REBUTTAL OF APPELLANT

The critical issue is the interpretation of the *Vehicle For Hire* Bylaw. A fundamental principle in interpreting legislation is to look at the plain meaning of the words.

Mr. Karbani provided another example of a person being convicted under the criminal code which would have no relevance to being a taxi driver:

If police were to enter someone's home and found a hunting rifle improperly stored that person could be convicted of careless storage.

The Bylaw, as interpreted by the Respondent, can capture a number of offences which really have no relevance to being a taxi driver.

Mr. Karbani suggested it would be different if this was a first time application by Mr. however the Committee has extensive records to look at. Mr. was a taxi driver for Astro Taxi in Sherwood Park for three years and then worked for Co-op Taxi in Edmonton for eight years. Mr. stated he would be able to obtain letters of reference from both of his previous employers.

VI. DECISION

The Committee upholds the Appeal. The licence should be issued for one year. A condition on the licence shall be that for the next five years Mr. licence will have to be renewed on an annual basis.

VII. REASONS

Reasons of Councillors Caterina and Banga

This case surrounds the wording of Section 33.1 of the Vehicle for Hire Bylaw. Two opposing interpretations of this provision are presented. The provision reads as follows:

33.1 (1) No person may drive a vehicle for hire if, during the past 10 years, the person was convicted of an offence under the *Criminal Code* (Canada) or the *Controlled Drugs and Substances Act* (Canada) that is related to the functions,

duties, or business of a vehicle for hire or driver, which includes, but is not limited to:

(a) any offence of a violent nature, including firearms and weapons offences;

...

The Respondent indicates that the way Section 33.1 is worded means that every item in each subsection is deemed to relate to the functions, duties, or business of a vehicle for hire. On the other hand the Appellant indicates that a clear reading of the section requires the committee to examine the nature of the offence to see whether any individual offence is connected with the vehicle for hire industry. In essence the Respondent suggests that Section 33.1(1) lists out a number of examples of criminal code offences that may relate to being a vehicle for hire driver. In their submission, it would still be necessary to determine, based on the nature of the offence, whether any given activity actually does relate to the industry.

The question that this Committee has been asked to decide is therefore whether any violent criminal activity is enough to deny a licence, or whether there needs to be some connection to the functions, duties, or business of a vehicle for hire. While there are clearly multiple interpretations of the bylaw, we prefer the interpretation of the Appellant.

A contextual reading of the bylaw suggests that there still must be a connection between the criminal activity and the vehicle for hire industry before a licence should be cancelled. The wording “that is related to the functions, duties, or business of a vehicle for hire, or driver” becomes meaningless unless there is a requirement to analyze how the individual activity relates those functions, and therefore constitutes some form of danger to the public.

Here, the offences of the Appellant, while violent in nature, relate to a domestic situation. Prior to the crimes, we have an individual with a long history of driving a vehicle for hire without incident. The Appellant pled guilty to common assault and breach of recognizance. What the Appellant did was reprehensible and unacceptable both in our eyes, and in the eyes of society, but, to state it simply, there is simply no connection between the domestic assault and the functions, duties, or business of being a vehicle for hire driver. Based on the nature of what took place, there does not appear to be any threat to the public if he continues to drive a vehicle for hire.

In a related decision, this committee reasoned that a number of factors would have to be considered in a decision whether to cancel a licence, and some of those factors are worth repeating here. These factors included the nature of the underlying conduct, the level of violence in the offense, whether there is a significant risk of reoffending, and whether there is a relevant history showing a pattern of conduct. The key underlying question in analyzing these factors is to decide whether there is a serious risk to the general public in issuing a licence. A risk to the general public is not necessarily the same as the risk to a specific individual, such as a domestic partner. Here, such an

analysis would lead to a conclusion that there is really no risk to the public, and this can be corroborated by the fact that the Appellant continued to operate a taxi for a period of time after his convictions with no problems.

In making this decision, we also recognize that to withhold the licence takes away one aspect of the livelihood of the Appellant. This could also impact his child, for which he pays child support. In this case, it would be difficult to rationalize affecting his livelihood through a cancellation unless the bylaw was clear and unambiguous.

During the hearing the Appellant suggested a number of conditions that could be placed on the licence if the Committee thought they may reduce the risk to the public. We find that none of the suggested conditions would have the required connection to ensure greater public safety. The only condition this committee would impose is a requirement for the licence to be renewed annually for the next five years. This will ensure a new police information check on a yearly basis. While there is always an ongoing obligation to inform the City under the bylaw of any change to the police information check, this condition will serve as an annual reminder to the Appellant to ensure that there are no further convictions of any nature. The timeline of 5 years was chosen since it matches the timeline chosen by the court for the prohibition of weapons.

As an aside, given the multiple interpretations of the bylaw, it would be useful to bring forward an amendment to remove any ambiguity and provide a degree of clarity.

Dissenting Opinion of Councillor Dziadyk:

I disagree with my colleagues and find that the violent nature of the crimes does demonstrate a risk to the general public. However, instead of agreeing with either party in the interpretation of Section 33.1, I would take a more nuanced approach to that interpretation.

The overarching intent of the bylaw is to ensure the safety of the public. There needs to be a high standard set in the vehicle for hire industry. There are times that taxis carry vulnerable and intoxicated persons. The public must feel safe knowing that the City of Edmonton licensing regime ensures the safety of all users including those that may be more vulnerable when using the service. The bylaw is worded so that violent activity that results in a criminal conviction would usually lead to the cancellation or denial of a licence. Anyone convicted of a violent crime has shown a propensity for violence and this increases the risk to the public if they continue to have a licence. This is consistent with the values demonstrated throughout the bylaw to ensure a high level of public safety.

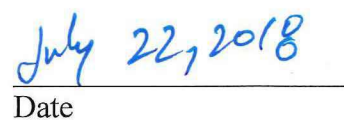
The Appellant has been a vehicle for hire driver for a long time until he recently showed a violent streak that was criminal in nature. Members of the public taking a taxi would not want someone that was recently convicted of a violent offence driving them around. The public would be worried that this newfound violent streak may not be a one time thing. At this time we cannot take the risk that this was a one time thing,

and therefore should deny the licence. This is why the bylaw is worded in such a way to say that violent crimes will lead to a cancellation.

In this case, I would have denied the appeal. Given the recent nature of the offence and the violence involved, there is simply too great a risk to the public to do otherwise.

I do however agree that an amendment to the bylaw may be useful to remove any ambiguity.


Councillor M. Banga


Date



COMMUNITY STANDARDS AND LICENCE APPEAL COMMITTEE

MINUTES (Draft)

July 12, 2018 – Churchill Building

PRESENT

M. Banga, J. Dziadyk, T. Caterina

ALSO IN ATTENDANCE

S. McDonald, Office of the City Clerk
 C. Ashmore, Law Branch
 I. Russell, Office of the City Clerk

TABLE OF CONTENTS

ITEM		PAGE	DECISION
1.	CALL TO ORDER AND RELATED BUSINESS	1	
1.1	Call to Order	2	
1.2	Adoption of Agenda	2	
1.3	Adoption of Minutes	2	
2.	EXPLANATION OF APPEAL HEARING PROCESS	2	
3.	COMMUNITY STANDARDS AND LICENCE APPEAL COMMITTEE MATTERS	2	
3.1	Appeal of Decision to refuse to issue a City of Edmonton's Driver's Licence under the Vehicle for Hire Bylaw 17400 to A. P. (File No. 080251498-001)	2	Appeal Allowed
3.2	Appeal of decision to impose conditions on Business Licence 107425872-001; 1370498 Alberta Ltd., o/a Nyala Lounge, 10875 - 98 Street NW	3	Withdrawn
4.	ADJOURNMENT	3	

DECISION SUMMARY

ITEM		DECISION
1.	CALL TO ORDER AND RELATED BUSINESS	

Clr. Banga called the meeting to order at 9:34 a.m.

1.1 **Call to Order**

1.2 **[Adoption of Agenda](#)**

Moved J. Dziadyk:

That the July 12, 2018, Community Standards and Licence Appeal Committee Agenda be adopted.	
---	--

In Favour:

M. Banga, J. Dziadyk, T. Caterina

Carried

1.3 **[Adoption of Minutes](#)**

Moved T. Caterina:

That the June 14, 2018, Community Standards and Licence Appeal Committee Minutes be adopted.	
--	--

In Favour:

M. Banga, J. Dziadyk, T. Caterina

Carried

2. [EXPLANATION OF APPEAL HEARING PROCESS](#)

Clr. Banga explained the hearing process and asked if anyone objected to any member of the Community Standards and Licence Appeal Committee hearing the appeals.

No one objected.

3. [COMMUNITY STANDARDS AND LICENCE APPEAL COMMITTEE MATTERS](#)

3.1 **[Appeal of Decision to refuse to issue a City of Edmonton's Driver's Licence under the Vehicle for Hire Bylaw 17400 to A. P. \(File No. 080251498-001\)](#)**

Mr. A. Karbani, legal counsel for the Appellant, made a presentation and answered the Committee's questions.

Mr. C. Ashmore, Law Branch, answered the Committee's questions.

Ms. W. T. Ramirez General Manager, Business Licensing, Inspections and Compliance, and Ms. N. Jacobsen, Law Branch, made a presentation and answered the Committee's questions.

The Committee met in private at 10:37 a.m. pursuant to Section 20 of *The Freedom of Information and Protection of Privacy Act*.

The Committee met in public at 11:07 a.m.

Moved T. Caterina:

The Committee upholds the appeal. The licence shall be issued for one year. For the next five years Mr. P's licence must be renewed on an annual basis

Business
Licensing and
Vehicle for
Hire

In Favour:

Carried

M. Banga, J. Dziadyk, T. Caterina

3.2

[Appeal of decision to impose conditions on Business Licence 107425872-001; 1370498 Alberta Ltd., o/a Nyala Lounge, 10875 - 98 Street NW](#)

This appeal was withdrawn by the Appellant

4.

ADJOURNMENT

The meeting was adjourned at 11:08 a.m.

Chair

City Clerk