



COMMUNITY STANDARDS & LICENCE APPEAL COMMITTEE

AGENDA

May 28, 2019 – Churchill Building

9:30 a.m.

Call to Order

4:30 p.m. Adjournment

12 noon to 1:30 p.m.

Lunch

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"> April 11, 2019, 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 Driver's Licence under the Vehicle for Hire Bylaw, Bylaw 17400 to M. S.	
3.2	Appeal of decision to refuse to issue a City of Edmonton Driver's Licence under the Vehicle for Hire Bylaw 17400 to J. T.	
3.3	Appeal of Order - 4787861 Alberta Ltd., 15815 - Stony Plain Road, Edmonton; Order pursuant to Section 546(1) of the <i>Municipal Government Act</i> .	
3.4	Appeal of Order, M.B., 4605 - 117 Avenue, Edmonton; Order pursuant to Section 545(1) of the <i>Municipal Government Act</i> .	
3.5	Appeal of Order - C. J. W. and P. F., 3508 - 41A Avenue NW, Edmonton; Order pursuant to Section 546(1)(c) of the <i>Municipal Government Act</i> .	
3.6	Appeal of Order - K. H., 5905 - 90A Avenue NW, Edmonton; Order pursuant to Section 545(1) of the <i>Municipal Government Act</i> .	Postponement Request

ITEM		ACTION
4.	ADJOURNMENT	

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SPECIAL COMMUNITY STANDARDS & LICENCE APPEAL COMMITTEE

MINUTES

April 11, 2019 – Churchill Building

PRESENT

M. Banga , J. Dziadyk, S. McKeen

ALSO IN ATTENDANCE

A. Chow / K. Wun, Office of the City Clerk
 C. Ashmore, Law Branch
 I. Russell, Office of the City Clerk

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DECISION SUMMARY

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

M. Banga called the meeting to order at 9:36 a.m.

1.2 Adoption of Agenda	
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The Items on the Agenda will be heard in the following

order: 3.3, 3.4, 3.1, 3.2.

Moved S. McKeen:

That the August 16, 2018, Community Standards and Licence Appeal Committee meeting agenda be adopted as amended.	
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In Favour:

Carried

M. Banga, S. McKeen, J. Dziadyk

1.2 Adoption of Minutes

Moved J. Dziadyk:

That the February 8, 2019, and February 19, 2019, Community Standards and Licence Appeal Committee meeting minutes be adopted.	
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In Favour:

Carried

M. Banga, S. McKeen, J. Dziadyk

1.3 Adoption of Community Standards and Licence Appeal Committee Procedures Manual

Moved S. McKeen:

That the revised Community Standards and Licence Appeal Committee Procedures and Guidelines Manual be adopted.	
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In Favour:

Carried

M. Banga, S. McKeen, J. Dziadyk

2. EXPLANATION OF APPEAL HEARING PROCESS

M. Banga explained the appeal 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

3.3 Appeal of Decision to refuse to issue a City of Edmonton Driver's Licence under the *Vehicle for Hire Bylaw 17400* to W.

M.

W. M., Appellant, made a presentation and answered the Committee's questions.

K. Johnson, Law Branch, made a presentation on behalf of Business Licencing and Vehicle For Hire and answered the Committee's questions.

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

The Committee met in private at 10:21 a.m., pursuant to Section 20 (Disclosure harmful to law enforcement) of the Freedom of Information and Protection of Privacy Act.

The Committee met in public at 10:34 a.m.

Moved S. McKeen

That the decision to refuse to issue a City of Edmonton Driver's Licence under the Vehicle for Hire Bylaw 17400 to W. M. be upheld.	
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In Favour:

Carried

M. Banga, S. McKeen, J. Dziadyk

3.4

Appeal of Order - B. N. D. and N. D.; 10945 - 152 Street NW, Edmonton, Alberta, Order pursuant to Section 545(1) of the *Municipal Government Act*.

M. Banga explained the hearing process regarding Municipal Government Act orders and asked if anyone objected to any member of the Community Standards and Licence Appeal Committee hearing the appeals. No one objected.

B. D., Appellant, made a presentation and answered the Committee's questions.

C. Perizzolo, Complaints and Investigations, made a presentation and answered the Committee's questions. She was accompanied by J. Lallemand, Complaints and Investigations, who answered the Committee's questions.

C. Ashmore, Law Branch, answered questions from the Committee.

Two sets of photographs dated December 18, 2018 and January 22, 2019 were provided to the Appellant, members of the Committee and the Office of the City Clerk.

The Committee met in private at 11:33 a.m., pursuant to Section 20 (Disclosure harmful to law enforcement) of the Freedom of Information and Protection of Privacy Act.

The Committee met in public at 11:59 a.m.

Moved J. Dziadyk:

The Committee varies the Order. The Date of compliance is May 16, 2019, and the Order shall exclude toys and building materials. A reasonable amount of these materials can be stored in a manner that is neat and tidy in the back yard.	Citizen Services Due Date: May 16, 2019
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In Favour:

Carried

M. Banga, S. McKeen, J. Dziadyk

3.1 **Appeal of Order - 487861 Alberta Ltd.; 15815 Stony Plain Road NW, Edmonton, Alberta, Order pursuant to Section 546(1) of the *Municipal Government Act*.**

R. Colistro, legal counsel for the Appellant, was unavailable to attend today's hearing and provided a written request that this matter be postponed to the May 16, 2019 Community Standards and Licence Appeal Committee meeting.

Moved S. McKeen:

That the hearing of this matter be postponed to the May 16, 2019, Community Standards and Licence Appeal Committee meeting.	
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In Favour:

Carried

M. Banga, S. McKeen, J. Dziadyk

3.2 **Appeal of Order - M. B.; 4605 - 117 Avenue NW, Edmonton, Alberta, Order pursuant to Section 545(1) of the *Municipal Government Act*.**

The Appellant, M. B., was not present but had submitted a written postponement request.

C. Perizzolo, Complaints and Investigations, provided the Respondent's position regarding this request.

Moved S. McKeen:

That the hearing of this matter be postponed to the May 16, 2019, Community Standards and Licence Appeal Committee meeting.

In Favour:

Carried

M. Banga, S. McKeen, J. Dziadyk

3.5 Appeal of Order, R. B.; 606 Bevington Place NW, Edmonton, Alberta, Order pursuant to Section 546(1)(a) of the *Municipal Government Act*.

J. Lallemand, Complaints and Investigations, advised the Committee prior to the meeting that the Order has been cancelled.

The hearing of this matter was therefore cancelled.

3.6 Appeal of Order - R. C.; 10946 - 154 Street NW, Edmonton, Alberta, Order Pursuant to Section 546(1)(a) of the *Municipal Government Act*.

J. Lallemand, Complaints and Investigations, advised the Committee prior to the meeting that the Order has been cancelled.

The hearing of this matter was therefore cancelled.

3.7 Appeal of Order - R.C.; 10946 - 154 Street NW, Edmonton, Alberta, Order Pursuant to Section 546(1)(c) of the *Municipal Government Act*.

J. Lallemand, Complaints and Investigations, advised the Committee prior to the meeting that the Order has been cancelled.

The hearing of this matter was therefore cancelled.

4. ADJOURNMENT

The meeting was adjourned at 12:04 p.m.

Chair

City Clerk



**EDMONTON
TRIBUNALS**

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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. 299382695-001

Hearing Date: May 28, 2019

Appellant:

I. ISSUE

Should a Driver's Licence be issued to _____ pursuant to the *Vehicle for Hire*
Bylaw 17400 (the Bylaw)?

II. APPEARANCES AND EVIDENCE

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

Appellant: _____ (Represented by Mr. Akram Attia, Barrister and
Solicitor)

Respondent: Ms. Kaylyn Johnson, City of Edmonton Law Branch

Ms. Wai Tse Ramirez, Acting Program Manager, Business
Licensing and Vehicle for Hire

Written Submissions:

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

III. SUMMARY OF APPELLANT'S POSITION

1. [redacted] previously appeared before this Committee on February 1, 2018. At that time this Committee denied [redacted] appeal on a split decision. Reasons cited were his alcoholism and that the most recent conviction was too soon for the panel. At the time of the previous hearing [redacted] had two criminal convictions within the last 10 years. Today there is only the one conviction from 2016 left on his record.
2. [redacted] requests that the Committee now reconsider issuing a licence with the passage of time, continued abstinence and continued regular attendance at support meetings. He attended his most recent meeting on May 26, 2019, and clearly demonstrates a commitment to sobriety.
3. A letter from Dr. R. Maitra in the Appellant's submission indicates that at the time of the 2016 conviction [redacted] was under several stressors including the severe illness of his mother and was suffering from undiagnosed depression for which he has now been treated. If these physiological factors had been considered at the time of the 2016 conviction they would have resulted in a reduced moral culpability.
4. [redacted] has done everything possible to prove that he has earned the right to obtain a Vehicle for Hire licence. He has been employed with DATS for 20 years and is subject to regular, spontaneous alcohol and drug testing as a condition of his employment there. He has been provided with support from his employer.
5. Mr. Mark Tetterington with the Amalgamated Transit Union Local 569 provided a letter of support dated January 19, 2018, stating that [redacted] has fully recovered from his addiction problem.
6. Mr. Attia quoted Section 33.1 of the *Bylaw* from the Respondent's submission.

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...

7. If the words "functions, duties or business of a vehicle for hire or driver" were not to be considered these words would not have been included in the legislation. Mr. Sidhu was driving his personal vehicle when he was charged.
8. Mr. Attia referred to *Envision Edmonton Opportunities Society v Edmonton (City)*, 2012 ABCA 188, at paragraph 33:

[A limitations provision], being a restrictive provision wherein the rights of action of the citizen are necessarily circumscribed by its terms, attracts a strict interpretation and any ambiguity found upon the

application of the proper principles of statutory interpretation should be resolved in favour of the person whose right of action is being truncated.

9. Any ambiguity in legislation should be decided in favour of the Respondent where a right is taken away or given up. Section 43(p) of the *Bylaw* clearly gives this Committee the ability to reinstate Mr. Sidhu's licence.
10. has not received any demerits and has only one prior conviction in the last 10 years. There is a substantial change in circumstances from the last hearing and he has proven his commitment to sobriety. He has provided letters of support from both professionals and employers. He has an exemplary work record with DATS working with the most vulnerable sector of our community.
11. The Appellant provided the following responses to questions from the Committee:
 - a. was issued a decision of refusal on February 1, 2018 and subsequently submitted a new application which was refused on November 30, 2018. He waited to re-apply until November 2018, because he wanted to prove his continued sobriety.
 - b. has been driving since 1997.
 - c. His 2016 conviction was for dangerous operation of a motor vehicle. This did not occur during the course of his employment.

IV. SUMMARY OF RESPONDENT'S POSITION

12. Ms. Kaylyn Johnson explained why the decision to deny application for a vehicle for hire driver's licence is reasonable and in the public's best interest. Ms. W. Ramirez, Acting Program Manager, Business Licensing and Vehicle for Hire, was also present to respond to questions. Ms. Johnson will deal with the interpretation of Section 33.1 before it was amended on June 12, 2019.
13. The City's position is that the committee's power is limited to that of the City Manager and that the Vehicle for Hire Bylaw precludes the City Manager from issuing a City of Edmonton Driver's Licence to anyone who has been convicted of a criminal offence within the past 10 years. was convicted of dangerous driving in 2016, and section 33.1(e) of both the previous bylaw as well as the amended bylaw state:

33.1 (1) No person may drive a vehicle for hire if, within the past 10 years, that person was convicted of any of the following offences under the *Criminal Code* (Canada), the *Controlled Drugs and Substances Act* (Canada), or the *Cannabis Act* (Canada):

...

(e) any offence relating to the unlawful operation of a motor vehicle from obtaining a City driver's licence.

That should be the end of this inquiry. has had a conviction within the last 10 years and is therefore ineligible to obtain a licence.

14. Section 33.1 of the *Bylaw* should be read in its entirety and there is nothing about that sentence that states that the listed offences had to have occurred only while driving a vehicle for hire vehicle.
15. November 30, 2018, application should be considered a new application, not a renewal as he has not held a City of Edmonton driver's licence since 2016. It would be an absurd result to interpret section 43(p) to allow a new applicant to obtain a licence despite having a criminal conviction as per section 33.1 of the *Bylaw* within the last 10 years.
16. No new information has been provided by the Appellant other than evidence of continued attendance at AA meetings. The reference letters all pre-date the November 30, 2018, application. Also, the submitted materials relate to alcohol addiction. The 2016 conviction is for dangerous driving which is not necessarily related to alcohol.
17. has been employed as a DATS driver for some time but his success in his current position is because of the supports that have been put in place by his employer. He would not necessarily have these supports as a taxi driver as he would be self-employed.
18. Even under the previous bylaw, the 2016 conviction for dangerous driving would fall under section 33.1(e) and would preclude him from obtaining a City of Edmonton driver's licence. There is nothing unique that would allow section 43(p) to be applied.
19. Ms. Johnson and Ms. Ramirez provided the following responses to questions from the Committee:
 - a. Ms. Johnson cannot confirm what the date of April 5, 2019 written on the November 30, 2019 application refers to.
 - b. It is a requirement to hold a Class 4 Provincial Driver's Licence prior to obtaining a City of Edmonton Driver's Licence.
 - c. Ms. Johnson does not have any details regarding the dangerous driving conviction.

V. REBUTTAL OF APPELLANT

20. The taxi cab owned and operated was also his personal vehicle. He used it to drive to work at DATS, to go shopping and for other day to day needs.
21. The 2016 conviction was as a result of taking a corner too fast and hitting a curb. There was some alcohol in his system at the time. Because of speed and alcohol Mr. Sidhu was charged with dangerous driving and pled guilty. He was driving his personal vehicle at the time and did not have a passenger.
22. He had to wait so long to re-apply for a new City of Edmonton licence because prior legislation meant provincial driver's licence was suspended from the time he was charged in October 2015. Legislation has since been changed to make the suspension effective from the date of conviction.
23. The April 2019 date on the application was the renewal date for Mr. provincial driver's licence.
24. Mr. Attia provided the following timeline of events for clarification:
 - Prior to October 2015: had a Class 4 provincial licence and a City of Edmonton Vehicle for Hire licence.
 - October 2015: He was charged when he hit the curb and his driver's licence was suspended.
 - September 20, 2016: He was convicted of dangerous driving and his driver's licence was suspended for an additional year.
 - November 30, 2018: applied to get his Vehicle for Hire Licence back and was refused.
25. has continued to improve himself by regularly attending AA meetings in his language (Punjabi) and is working closely with his sponsor. He has a substantial track record of sobriety since 2016 which alleviates concerns of public safety.
26. Section 33.1 clearly states that the convictions have to be related to driving a vehicle for hire. And section 43(p) of the *Bylaw* clearly gives this Committee the ability to waive any of the requirements in section 33.1, otherwise it would not be there.

VI. REBUTTAL OF RESPONDENT

27. Ms. Johnson again urged the committee to read Section 33.1 in its entirety.

28. Ms. Johnson and Ms. Ramirez provided the following responses to questions from the Committee:
- a. The City considers convictions, not charges. If they know a driver has been charged, the onus is on the driver to advise of any changes to their police information check.
 - b. The City Manager did not revoke any licences as a result of the changes to the *Bylaw*. Licences are allowed to run to the next expiry date before they are examined to see if there are criminal convictions.

VII. DECISION

The Committee denies the appeal. The conviction relates to the duties and functions of operating a vehicle for hire. Written reasons to follow.

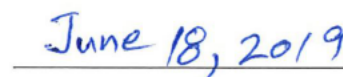
VIII. REASONS

29. The Appellant appeals the decision of the Program Manager, Business Licensing and Vehicle for Hire, to refuse to issue a vehicle for hire license. Shortly after the refusal, amendments were made to the *Vehicle for Hire Bylaw*. These amendments were made to resolve an ambiguity in the language surrounding section 33.1 of the bylaw. As a result of the timing of this amendment, the first issue that the Committee had to decide was whether to deal with this appeal under the old version of the bylaw, or under the new version.
30. The application for a licence was made prior to the amendments. The refusal from the Program Manager was issued prior to the amendments. Both of these factors would suggest that the old version of the bylaw should be considered. However, there is also an argument that this is a hearing *de novo*, so the amendments are now in force and should apply.
31. The Program Manager also informed the Committee that the only time criminal checks were done to enforce the provisions of section 33.1 were at the time renewals or new applications were submitted. This method of enforcement means that two other considerations need to be considered. First, until such time as all licences are renewed, there may be vehicle for hire drivers with criminal convictions within the last ten years who would be banned under the provisions of the new amendment, but were not captured by the previous amendment. Second, this Committee is aware that over the last few months, prior to bylaw amendments, a number of drivers have been granted a licence by this Committee since the criminal activity was not related to the functions, duties, or business of a vehicle for hire or driver.

32. There is little question that under the terms of the amended bylaw, the Appellant would be denied a licence. If the enforcement of this bylaw was done in such a way that the Appellant would have his license reviewed immediately after this hearing under the terms of the new bylaw, then the Committee would have applied the provisions of the amendment. However, given the way enforcement is done, and given that the application and refusal were both done prior to the amendments being passed, this Committee finds that the only fair way to decide this application is under the provisions of the bylaw in force at the time of the application. To do otherwise would have the effect of penalizing the Appellant based on unlucky timing, while various other vehicle for hire drivers would retain their licences because their applications were fully decided before the amendments were passed.
33. The version of the Bylaw in place at the time of application requires an analysis of whether the criminal activity was related to the functions, duties, or business of a vehicle for hire. Contrary to the argument of the Respondent, this is not an analysis about whether the crime took place while the person was operating a vehicle for hire. Instead this is an analysis of whether the type of conduct associated with the conviction directly relates to the job functions of a vehicle for hire.
34. Here, the type of criminal conduct took place while the Appellant was driving a vehicle. Driving is a core function of a vehicle for hire driver. It does not matter that the offence did not take place while operating a vehicle for hire. The Appellant committed a crime while doing exactly what vehicle for hire drivers are paid to do, which is to drive. This alone would be enough to deny the appeal.
35. However, as an additional consideration, it appears that the vehicle that was involved in the crime was the same vehicle that was being used as a vehicle for hire. This creates an additional connection and provides an additional reason to deny the appeal. This also provides a reason not to waive the requirements of section 33.1 by using section 43(p).
36. While the Appellant works for the City as a DATS driver, this is not relevant to the analysis. As an employer, the City can safeguard its interests by setting certain conditions. This means that the City, as an employer, can retain a large amount of control over the Appellant, as an employee, through the employer/employee relationship. By contrast, this employer/employee relationship does not exist within the context of a vehicle for hire license, so the City would have far less control over the Appellant as a vehicle for hire driver.
37. While the Committee feels for the Appellant, and encourages him to continue to make strides with the issues that led to the convictions, under the current wording of the bylaw, this Committee cannot issue a vehicle for hire licence. The appeal is therefore denied.



Councillor M. Banga



Date



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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. 007310985-001

Hearing Date: May 28, 2019

Appellant:

I. ISSUE

Should a Driver's Licence be issued to
Bylaw 17400 (the Bylaw)?

pursuant to the *Vehicle for Hire*

II. APPEARANCES AND EVIDENCE

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

Appellant:

Respondent: Ms. Kaylyn Johnson, City of Edmonton Law Branch

Ms. Wai Tse Ramirez, Acting Program Manager, Business
Licensing and Vehicle For Hire

Written Submissions:

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

III. SUMMARY OF APPELLANT'S POSITION

1. has lived in Edmonton since 1996 and has been driving a taxi since 1998 (20 plus years). His conviction is not related to any traffic related act and relates to a family dispute between himself and his son who currently resides with him. He does not have any demerits.
2. He has never had any complaints against him in the 20 plus years he has been driving a taxi. He has a Class 4 drivers licence and until recently also had a City of Edmonton driver's licence.
3. He resides with his wife and two sons and has been providing for his family all of his life. It has been very difficult since he has not been able to drive a taxi; he has applied to many places but received no response. He has been renting a taxi for \$1,400 per month so the person he is renting from is also losing this money.
4. His wife works full time but is unable to cover all of the family's expenses. One son is currently laid off and the other attends the University of Alberta and pays all of his fees.
5. provided the following responses to questions from the Committee:
 - a. His City licence expired on March 6, 2019, and he had applied for renewal five or six days prior to that date.
 - b. He was told that his licence renewal was denied because of the criminal records on his file within the last 10 years.

IV. SUMMARY OF RESPONDENT'S POSITION

6. K. Johnson, Law Branch, explained why the decision to deny application for a City of Edmonton driver's licence is reasonable and in the public's best interest. Ms. W. Ramirez, Acting Program Manager, Business Licensing and Vehicle for Hire, was also present to respond to questions.
7. Section 33.1 of the *Vehicle for Hire Bylaw*, was amended on March 12, 2019, to make the wording less ambiguous. Ms. Johnson relied on this most recent version of the *Bylaw*.
8. This Committee's powers are limited to those of the City Manager under the *Bylaw*. This precludes the manager and this Committee from issuing a licence to anyone who has been convicted of a criminal offence within the last 10 years.
9. has two offences of a violent nature on his record which clearly precludes him from obtaining a City of Edmonton Driver's Licence:

- a. Assault with a Weapon (October 9, 2012)
 - b. Uttering Threats (March 21, 2018)
10. That should be the end of this inquiry as section 33.1 of the *Bylaw* would take effect.
 11. In his written submission _____ commented about the fairness of the *Bylaw* being applied retroactively. That is a moot point because Section 33.1 in the 2017 version of the *Bylaw* has been in place since he received his most recent conviction. Also this Committee cannot deal with arguments regarding the fairness of the *Bylaw*; it is not within their jurisdiction.
 12. The City's interpretation of section 43(p) of the *Bylaw* is that it does not allow the City Manager or this committee to waive the criminal record requirements found in section 33.1 of the *Bylaw*. That would make section 33.1 internally inconsistent as section 33.2 requires that a person must lose their licence if convicted of any of the offences listed in section 33.1
 13. It would be an absurd result if someone who presently has a vehicle for hire licence must lose their license while someone else applying could obtain a licence even if they have been convicted of the same offence.
 14. Interpreting section 43(p) as allowing a waiver would frustrate the intention of Council's most recent bylaw amendment. The words "related to the functions, duties, or business of a vehicle for hire or driver" were removed as they left confusion as to whether the offence needed to be done while driving. The amendment removed any questions as to what council intended when they enacted this section of the *Bylaw*.
 15. The Respondents provided the following responses to questions from the Committee:
 - a. The City's intention has always been to preclude any individual with any criminal conviction within the last 10 years from obtaining a City of Edmonton Driver's Licence. This individual has received a second conviction in 2018 which renews the public interest in precluding an individual such as this.
 - b. Ms. Johnson does not know the details of the second offence; _____ had indicated it was a domestic situation. He was charged under Section 264.1 of the Criminal Code of Canada which deals with uttering threats to cause death or bodily harm.
 - c. Council has been clear with respect to the most recent amendments that they are not looking for an offence that was committed while operating a vehicle for hire. It has always been the City's position that the offence didn't have to occur while

driving. From a public interest or public safety perspective any violet incidence is potentially a concern.

- d. City of Edmonton drivers' licences can be renewed for one or two years.
 - e. While this application was made under the old bylaw this is a hearing *de novo* and the current bylaw should apply.
16. During deliberations the Committee decided that they needed more information to make a decision. They obtained this information by asking the question through their legal counsel, in the presence of both parties, whether the only time licences are denied by the program manager are when they are up for renewal. The answer was that this was the only time licences were currently being denied. This means that someone could have a criminal conviction for months before the license came up for renewal and was denied.

V. DECISION


The licence will be granted for the period applied for in the application with the written reasons to follow.

VI. REASONS

17. The Appellant appeals the decision of the Program Manager, Business Licensing and Vehicle for Hire, to refuse to issue a vehicle for hire licence. Shortly after the refusal, amendments were made to the Vehicle for Hire Bylaw. These amendments were made to resolve an ambiguity in the language surrounding Section 33.1 of the bylaw. As a result of the timing of this amendment, the first issue that the Committee had to decide was whether to deal with this appeal under the old version of the bylaw, or under the new version.
18. The application for a licence was made prior to the amendments. The refusal from the Program Manager was issued prior to the amendments. Both of these factors would suggest that the old version of the bylaw should be considered. However, there is also an argument that this is a hearing *de novo*, so the amendments are now in force and should apply.
19. The Program Manager also informed the Committee that the only time criminal checks were done to enforce the provisions of Section 33.1 were at the time renewals or new applications were submitted. This method of enforcement means that two other considerations need to be considered. First, until such time as all licences are renewed, there may be vehicle for hire drivers with criminal convictions within the last ten years who would be banned under the provisions of the new amendment, but were not captured by the previous amendment. Second, this Committee is aware that over the last few

months, prior to bylaw amendments, a number of drivers have been granted a licence by this Committee since the criminal activity was not related to the functions, duties, or business of a vehicle for hire or driver.

20. There is little question that under the terms of the amended bylaw, that the Appellant would be denied a licence. If the enforcement of this bylaw was done in such a way that the Appellant would have his licence reviewed immediately after this hearing under the terms of the new bylaw, then the Committee would have applied the provisions of the amendment. However, given the way enforcement is done, and given that the application and refusal were both done prior to the amendments being passed, this Committee finds that the only fair way to decide this application is under the provisions of the bylaw in force at the time of the application. To do otherwise would have the effect of penalizing the Appellant based on unlucky timing, while various other vehicle for hire drivers would retain their licences because their applications were fully decided before the amendments were passed.
21. The version of the Bylaw in place at the time of application requires an analysis of whether the criminal activity was related to the functions, duties, or business of a vehicle for hire. Contrary to the argument of the Respondent, this is not an analysis about whether the crime took place while the person was operating a vehicle for hire. Instead this is an analysis of whether the type of conduct associated with the conviction directly relates to the job functions of a vehicle for hire.
22. Here, the type of criminal conduct was assault with a weapon and uttering threats. This Committee heard uncontested testimony that these matters were domestic in nature, and that there are no ongoing issues. This Committee is therefore tasked with deciding whether domestic assault issues are related to the functions, duties, or business of a vehicle for hire. This Committee finds that they are not. Past issues relating to domestic assault would not create a risk to the public if the Appellant was a driver. Assaulting a member of the Appellant's family does not create a risk that the Appellant would assault a passenger in the same way. This type of criminal activity is not directly associated with operating a vehicle for hire.
23. The appeal is therefore granted and the licence will be issued for the period that was originally applied for.
24. Notwithstanding this decision, the Appellant is also on notice. When his licence comes up for renewal, the new bylaw amendments will apply and he will be banned from operating a vehicle for hire based on these same convictions. Unless there are additional bylaw amendments, he should plan accordingly.


Councillor M. Banga

June 18, 2019
Date



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Decision of the Committee

Appeal of Order 2954786821-001; 4605 – 117 Avenue NW, Edmonton, Order Pursuant to Section 545(1) of the *Municipal Government Act*

Hearing Date: May 28, 2019

Appellant:]

I. ISSUE

Whether the MGA Order dated November 2, 2018, was issued correctly.

II. APPEARANCES AND EVIDENCE

In dealing with the Appeal of Order 295478682-001, the Community Standards and Licence Appeal Committee (the Committee) heard from:

Appellant: (not present – by way of written submission)

Respondent: C. Perizzolo, General Enforcement Coordinator, Complaints & Investigations, Citizen Services, Community Standards Branch

III. SUMMARY OF APPELLANT'S POSITION

1. did not appear in person and provided a written submission which included the following points:

- a. The Order was falsely issued as the garbage pile was never in the first place and belonged to his neighbour.

- b. . stated that the bylaw officer falsely reported compliance. Mr. . did not comply with the Order – his neighbour did.
- c. is requesting that the Order be struck from the record.

IV. SUMMARY OF RESPONDENT'S POSITION

2. On October 17, 2018, the bylaw officer was on proactive patrol in the Beverly Heights neighbourhood and observed the unsightly and untidy condition at the rear of the property, visible from both the alley and neighbouring properties. Items included furniture, a sofa, mattresses, loose litter and other debris. A photo was taken and a Notice to Comply was issued on October 18, 2019, to both the property owner and the tenant.
3. On October 24, 2018, the bylaw officer attempted to contact the property owner, Mr. , in response to a request made via 311. The officer left a phone message providing his direct contact information.
4. A follow-up inspection was conducted on November 1, 2018, which found that the original nuisance condition was cleaned. However, new items contributing to a nuisance condition were observed: a mattress, furniture, shelves and wood. Four photos were taken and a 545 MGA Order was issued on November 2, 2018 ordering the land owner to remediate the property in the manner specified.
5. On November 28, 2018, a follow-up inspection confirmed that the property was in compliance with the *Community Standards Bylaw* and the investigation was concluded.
6. Photographs dated October 17, 2018, and November 1, 2018, were provided to the members of the Committee and the Office of the City Clerk.
7. Ms. Perizzollo provided the following excerpts from the relevant legislation:
 - a. Section 6 of the *Community Standards Bylaw* identifies nuisance as “.....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.....” Examples in the bylaw include an “excessive accumulation of material including but not limited to building materials, appliances and household goodswhether of any apparent value or not”.
 - b. Section 545(1) of Municipal Government Act allows a designated officer to enforce a violation of a bylaw or enactment by issuing a written order to the offender requesting that the infraction be remedied.

8. Based on the above information administration is satisfied that section 6 of the *Community Standards Bylaw* had been contravened and asks that the 545 Order be upheld.
9. Ms. Perizollo provided the following responses to questions from the Board:
 - a. The Order has been complied with; therefore, the file has been closed.
 - b. Property owners are ultimately responsible for items on their property regardless of how they got there. The City does not verify who the materials belong to. An analogy is graffiti. It is the responsibility of the property owner to remedy the site even though the graffiti was done by someone else.
 - c. Once the materials listed in the Order are gone administration considers the Order to be complied with.
 - d. If further action is required Community Standards would reach out to the property owner. If the property is found to be in compliance there is no further communication.

V. DECISION

The Committee upholds the Order.

VI. REASONS

10. In his written submissions [redacted] makes several arguments, including raising matters which are outside the jurisdiction of this Committee. Since he was not present, he could not provide clarification on a number of his points, or answer the questions of the Committee. The Committee was left to interpret the arguments that he was making as best as it could.

MOOTNESS

11. It was noted that to some extent this appeal appears to be moot since the alleged nuisance was already removed. When the issue found in an order is remedied this does not mean the order disappears, since it would remain in the City of Edmonton computer system as a validly issued order unless it is overturned on appeal. It is therefore necessary for this Committee to determine whether the order was validly issued since that will decide

whether City of Edmonton records will show this as a valid order that could be used against the Appellant in future proceedings.

IS THERE A NUISANCE?

12. Section 6(1) of the Edmonton Community Standards Bylaw indicated that a person shall not cause or permit a nuisance on land they own or occupy. Section 6(2) provides various examples of what constitutes a nuisance including loose litter, garbage or refuse whether located in a storage area, collection area or elsewhere on land. It is important to remember that the role of this Committee is not to analyze what the property looks like either before the order is issued or after the order is issued. What is important is the condition of the property at the time the order was issued.
13. At the time the order was issued, there are various items strewn about the back alley. There are some items that cross over the property line into the neighboring property. To the extent these items cross the property line they cannot be taken into account in determining whether there is a nuisance on this property.
14. The items include a mattress, piles of wood and other wooden items (that may be construction materials), and other items that are difficult to identify. These items meet the definition of nuisance in the Community Standards Bylaw. The Committee therefore finds that there is a nuisance of the property under the terms of the *Bylaw*.

IS THIS MATERIAL GARBAGE?

15. The material in question may very well be garbage and may very well have been put out for garbage collection. However, it still meets the definition of a nuisance under the bylaw. More importantly, even if this material was put out for garbage collection, it does not meet the requirements for collection under Section 18 and 33 of the Waste Management Bylaw 17555. That bylaw has requirements on how garbage is set out, and the types of items that may be set out for collection.

THE NUISANCE WAS CAUSED BY THE NEIGHBOR

16. The Appellant argues that all of the materials were placed on the property by the neighbor and the neighbor was the one who cleaned the property. In essence the Appellant is arguing that the nuisance is not his fault.
17. The Bylaw indicates that a person shall not cause or permit a nuisance on land they own. The word permit means that an owner is responsible for dealing with a nuisance on their own property whether or not the owner caused the nuisance. Whether this material was put

on the property by the neighbor is not relevant since there is no requirement to prove that the owner created the nuisance. The owner is responsible for the land they own and it is not the role of the City of Edmonton, in this context, to get involved in private disputes if illegal dumping is occurring.

ALTERNATIVE DEFINITIONS OF NUISANCE

18. The Appellant also argues that the City should be applying other legal definitions of nuisance. Nuisance is defined by City Council with the Community Standards Bylaw. This Committee is required to apply the bylaw definition, not other legal definitions. There is no requirement on City Council to use the same definitions brought forward by the Appellant when passing the bylaw.

THE SURROUNDING NEIGHBORHOOD

19. The Appellant also argues that there are other properties in the neighborhood that are as bad or worse than his, and that nothing is being done about those properties.
20. There is no way for this Committee to know whether these other properties are subject to complaints, subject to orders, or in the process of being remediated. The Appellant is free to complain about any other properties that he feels are a nuisance.
21. However, whether these other properties are also a nuisance does not change the fact that the Appellant's property was a nuisance at the time that the order was issued.

TARGETING

22. The vast majority of the arguments of the Appellant surround the issue about whether he is being targeted by bylaw enforcement.
23. Being targeted would imply that he is being issued orders or tickets that he should not be issued. Since this Committee found that this order was warranted, it is hard to see how this would be considered to be targeting the Appellant.
24. However, whether he is being targeted or not is not within the delegated authority of this Committee. This Committee was established to hear appeals pursuant to the Community Standards and Licence Appeal Committee Bylaw. This appeal was brought pursuant to Section 547 of the Municipal Government Act. The bylaw allows this Committee to review the order. It does not authorize a broader review of the actions of bylaw enforcement and whether an individual is being targeted. The procedure for a review of the actions of a bylaw officer is found in Bylaw 16368, the Enforcement Bylaw. Actions

under the Enforcement Bylaw have not been delegated to this Committee. If Mr. Boonstra wishes to complain about an officer, he should use the mechanisms in that bylaw.

25. It should be noted that it appears that all the material that the Appellant has requested under FOIP relate to these allegations about targeting so would not be relevant to this Committee.

PROCEDURAL FAIRNESS

26. The Appellant also argues that he does not know the case to be met. It is impossible to see how the Appellant would not know how this hearing would unfold. He argues there was no nuisance. This would be based on the condition of the property at the time the order was issued. This is property owned by the Appellant so this would obviously be in the Appellant's knowledge. He has the order - he knows what was alleged in the order. There was no evidence brought forward by the Respondent that would have been surprising to the Appellant - this evidence was pictures of what was on the property.
27. The procedure that was followed is the procedure found within the bylaw. The Committee sees no reason to think that procedural fairness was breached.

SUMMARY

28. The property met the definition of nuisance at the time that the order was issued. The order is therefore valid. Since the property has already been remedied, no further action is required.



Councillor M. Banga

June 18, 2019
Date



Postponement Decision of the Committee

Appeal of Order 300214738-001; 3508 – 41A Avenue NW, Edmonton, Order Pursuant to Section 546(1)(c) of the *Municipal Government Act*

Hearing Date: May 28, 2019

Appellant:

I. ISSUE

Whether the property in question is in a nuisance condition.

II. APPEARANCES AND EVIDENCE

In dealing with the Appeal of Order 295478682-001, the Community Standards and Licence Appeal Committee (the Committee) heard from:

Appellant:

Respondent: C. Perizzolo, General Enforcement Coordinator, Complaints & Investigations, Citizen Services, Community Standards Branch

III. SUMMARY OF APPELLANT'S POSITION

1. The Appellant was not aware that her appeal was not time specific and was part of a number of appeals that would be dealt with at today's hearing. She had only booked the morning off of work.
2. In response to a question from the Committee she did not agree to presenting her evidence prior to the lunch break and having the remainder of the hearing proceed in her absence. She preferred a complete postponement.

3. The Committee agreed to postpone the hearing to June 27, 2019. After this motion was made and passed the Appellant realized she had a course booked for that day and asked for a further postponement to August 22, 2019.

IV. SUMMARY OF RESPONDENT'S POSITION

4. The Respondent agreed to a postponement to June 27, 2019, but objected to a further postponement to August 22, 2019, as that would add another two months to the process.
5. This Order was issued in response to a citizen's complaint and is a s 546(1) MGA Order which is more serious in nature. Community Standards has already provided the owners extra time to bring the property into compliance over the winter. An officer visited the property on May 27, 2019, and no work has been done.

V. DECISION

The hearing of this matter has been postponed until June 27, 2019. The request for an additional postponement to August 22, 2019 is denied.

VI. REASONS

6. The notice of hearing that was sent to the Appellant referenced that the hearings would start at 9:30. The Appellant took time off from work to appear but assumed that the matter would be dealt with by the end of the morning. Unfortunately, there were some other longer matters that were scheduled to be heard first. As such, notwithstanding that the Appellant, in good faith, took time off to present her appeal, she would not have been available in the afternoon. Since the Respondent did not object, the hearing will be postponed until June 27, 2019 (which was initially agreed to by both parties) which is a postponement of about one month - a reasonable time frame.
7. Upon returning from lunch it was brought to the attention of the Committee that the Appellant was now asking for a further postponement after June 27, 2019. This was as a result of a prior scheduled course on June 27. The Respondent objected to this postponement on the grounds that this would postpone matters too far into the future, and that the neighbors should not have to live with the outstanding issues on this property for that long.

8. The Committee agrees that a further postponement is not warranted and would delay matters too long. It was noted that one of the major reasons for the complaint was that the snow just melted and the Appellant had not been able to start yard work - this would have been resolved by the adjournment to June 27, 2019. If the Appellants are not able to make the June 27 date, they are certainly free to send an agent, or to submit a full argument in writing for consideration by this committee. An additional adjournment is denied.


Councillor M. Banga

June 06, 2019
Date



Postponement Decision of the Committee

**Appeal of Order 300685226-001; 5905 – 90A Avenue NW, Edmonton, Order
Pursuant to Section 545(1) of the *Municipal Government Act***

Hearing Date: May 28, 2018

Appellant:

I. ISSUE

Whether the appeal hearing should be postponed.

II. APPEARANCES AND EVIDENCE

Appellant: Written Postponement Request from

Respondent: C. Perizzolo, General Enforcement Coordinator, Complaints &
Investigations, Citizen Services, Community Standards Branch

SUMMARY OF APPELLANT'S POSITION

The appellant was unable to attend today's hearing due to medical appointments.

III. SUMMARY OF RESPONDENT'S POSITION

The Respondent had no objections to the postponement request.

IV. DECISION

That a Postponement be granted and the appeal hearing be scheduled for August 22, 2019.

V. **REASONS**

The nature of the medical appointments would suggest that an adjournment is warranted. Since there was no objection by the Respondent, the adjournment is granted.



Councilor M. Banga

June 18, 2019
Date



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Postponement Decision of the Committee

**Appeal of Order 311092971-001; _____, Edmonton, Order
Pursuant to Section 545(1) of the *Municipal Government Act***

Hearing Date: May 28, 2019

I. ISSUE

Whether the appeal hearing should be postponed.

II. APPEARANCES AND EVIDENCE

Appellant: Written Postponement Request from

Respondent: C. Perizzolo, General Enforcement Coordinator, Complaints &
Investigations, Citizen Services, Community Standards Branch

III. SUMMARY OF APPELLANT'S POSITION

The Appellant submitted the following Postponement Request:

“We have a family wedding that we are in the wedding party in BC and will be travelling from Edmonton to Kelowna on June 26.

Can we have another date?

Thank you,

IV. SUMMARY OF RESPONDENT'S POSITION

The Respondent had no objections to the postponement request.

V. DECISION

That a Postponement be granted and the appeal hearing be scheduled for August 22, 2019.

VI. REASONS

This matter was originally scheduled to be heard on June 27, 2019. This date was set without consulting with the parties. It turns out that the date of hearing would conflict with a significant family event. Given that there was no objection by the Respondent, the matter shall be postponed to allow the Appellants to attend the event.



Councillor M. Banga

June 18, 2019

Date