



# **PROCEDURAL MANUAL FOR LICENCE AND COMMUNITY STANDARDS APPEAL BOARD**

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## **PREFACE**

The Procedural Manual was developed primarily for the use of members of the Licence and Community Standards Appeal Board (LCSAB). The Manual will also provide people appearing before the Board with useful insights into what to expect.

Amended June 2008

Members are appointed to the Board by the Council of The City of Calgary. The citizen members are selected through a publicly advertised open process, and serve for the number of years specified in the Bylaw.

The purpose of this Manual is to deal with administrative and legal matters that affect the hearing process.

## **SECTION 1 - THE BOARD AND ITS POWERS**

The Board means the Licence and Community Standards Appeal Board (LCSAB) as the context requires.

### **A. THE BOARD**

1. The Board consists of five citizen members who are appointed by City Council. The circumstances under which the Board is appointed are legislated in City of Calgary Bylaw 50M2011, being a Bylaw to continue the Licence and Community Standards Appeal Board.

Amended June 2008

Amended October 2011

2. The purpose of the Board is to hold administrative hearings to deal with appeals from decisions of certain City administrators.

Amended April 2007

### **I. Appointment of the Board**

3. The LCSAB is established by City of Calgary Bylaw 50M2011. The Board was established to hear appeals of:
  - a) The refusal, revocation or suspension of a licence, or conditions applied to a licence, by the Chief Licence Inspector or the Manager of Livery Transport Services of the City;
  - b) The refusal, revocation or suspension by the Chief of Police of an alarm system permit as provided for in the Alarm Services Bylaw 31M95;
  - c) The refusal of the Manager of Livery Transport Services of the City to allow a change of colour of a Livery Vehicle;
  - d) The refusal of the Manger of Livery Transport Services of the City to grant an application under section 104(1) and (2) or section 118 of the Livery Transport Bylaw 6M2007;

- e) An order regarding critical defects issued by the Manager of Livery Transport Services of the City;
- f) A remedial order;
- g) An order issued pursuant to section 545 of the *Municipal Government Act* regarding contraventions of other bylaws or enactments that the City is authorized to enforce;
- h) A decision of the Director, Water Resources, pursuant to section 11 of the Lot Grading Bylaw 32M2004;
- i) An order issued pursuant to section 546 of the *Municipal Government Act*, and
- j) Inspector's notices, local authority notices and debt recovery notices pursuant to section 19 of the *Weed Control Act*.

Amended April 2007

Amended June 2008

Amended October 2011

## **II. Composition of the Board**

- 4. The Board is composed of up to five citizen members who are appointed by resolution of Council and are appointed for one-year terms commencing January 01 and ending December 31.

Amended June 2008

Amended October 2011

## **B. POWERS**

- 5. The powers of the LCSAB are legislated in Bylaw 50M2011.

Amended June 2008

Amended October 2011

## **I. Hearing of Appeals**

6. After calling the hearing and confirming the appellant received notice of the hearing, the Board may:
  - a) if the appellant fails to appear, dismiss the appeal;
  - b) proceed to hear the matter in the absence of the party;
  - c) adjourn the hearing in the absence of the party; or
  - d) if the appellant appears and the hearing proceeds, dismiss the appeal if the Board finds it is without merit.

Amended October 2011

## **II. Finding of Merit**

7. The Board may, if it finds the appeal has merit in whole or in part, order the entity against whom the finding was made, to do any or all of the following:
  - a) confirm the refusal, revocation or suspension;
  - b) direct that a licence or permit be issued;
  - c) direct that the revoked licence or permit be reinstated;
  - d) remove or vary the suspension;
  - e) impose conditions on licence or permit and licensee or permit holder;
  - f) confirm, rescind or vary the notice issued under the *Weed Control Act*; or
  - g) after reviewing the order, the Board may confirm, vary, substitute or cancel the order.

Amended June 2008

Amended September 2009

Amended October 2011

## **III. Costs**

8. The LCSAB may not make any order as to costs.

## SECTION 2 - PRINCIPLES OF NATURAL JUSTICE

The principles of natural justice include the right to be heard and the rule against bias.

### A. THE RIGHT TO BE HEARD

9. Procedurally the right to be heard may include many things. However, the fundamental question is always, “has the affected individual or party been given an adequate opportunity to present his case and to know the case against him?” The right to be heard includes notice, a fair hearing, the right to counsel, the right to disclosure of evidence, the right to witnesses, the admission of evidence, in certain circumstances the right to cross-examine witnesses, the right of adjournment, reasons for decision and the right to appeal.

### B. BIAS

10. The rule against bias provides that the person appealing is entitled to have an independent or impartial decision-maker decide the case. The right to a fair hearing requires that the decision-maker not have pre-conceived notions about how a case will be decided and not have a personal interest in the outcome of the case.
11. The following circumstances have been held to give rise to a reasonable apprehension of bias on the part of the decision-maker:
  - a) family relationship or close personal friendship with a party or a witness;
  - b) business relationship with a party or a witness;
  - c) history of animosity toward a party or the party’s family;
  - d) making statements during proceedings indicating unreasonable hostility towards a party, counsel or the case;

- e) a pecuniary interest in the outcome of the case (direct or indirect);
- f) expression of views reflecting a predisposition to decide a case a certain way.

## **SECTION 3 - THE NATURE AND CONDUCT OF A BOARD HEARING**

### **A. THE HEARING**

12. In a Board hearing all parties have an opportunity to present their case and their evidence. The hearing, however, is not a trial and the rules of evidence do not apply.

Amended October 2011

13. The burden of proof rests with the appellant. The burden of proof for the Board hearing is the civil standard which requires the party bearing the burden of proof to establish a case “on a balance of probabilities.” This means that if the Board can say, “we think it more probable than not”, the burden is discharged, but if the probabilities are equal, it is not.

### **I. Parties**

14. The parties are:
- a) the appellant; and
  - b) the administration of the City of Calgary.

Amended April 2007

Amended September 2009

15. Other people may be in attendance at the hearing such as an interpreter, expert witness or other witnesses.

## **II. Carriage**

16. The appellant has carriage of a proceeding before the Board. "Carriage" means control and management of a legal proceeding. This means the appellant has the obligation to proceed with his case and if he fails to do so, the case can be dismissed for want of prosecution.

## **III. Representation at Hearing**

17. The parties to a hearing before the Board are entitled to appear and be represented by counsel.
18. In addition to being represented by counsel, the parties to a hearing are entitled to appear in person or by an authorized agent.

## **V. Public Access**

19. A hearing before the Board shall be open to the public unless, on the application of any party, the Board decides that it would be advisable to hold the hearing in private:
  - a) because of the confidential nature of the matter to be heard, or
  - b) because of *Freedom of Information and Protection of Privacy Act* (FOIP) R.S.A. 2000 c. F-25 or *Personal Information Protection Act* (PIPA) R.S.A. 2000 c. P-6.5 concerns.

No Board member may discuss with any parties or witnesses any matter before the Board prior to, during or after the hearing. If a Board member is approached the member is to disclose said contact to the Chair. The Board will determine whether or not there is a potential for bias or conflict of interest.

All communication from the public and the parties outside of when a hearing is in session will be through the Appeal Board administration.

Amended October 2011

## **VI. Media Protocol**

20. Media are entitled to attend Board hearings and to sit in the public seating area. No questions, filming, taping or photographs will be allowed in the hearing room unless there is prior approval from the Chair. Interviewing of the parties shall not be done in the hearing room.

Only the Chair is authorized to speak to the media on behalf of the Board. The Board generally speaks through its decisions.

Amended October 2011

## **VII. Witnesses**

21. The Board in its discretion may require witnesses to:
- a) be excluded from the hearing room by the Chair until called upon to give evidence;
  - b) be questioned and cross-examined by the parties to the proceeding;
  - c) be asked questions by members of the Board;
  - d) be limited in time; and
  - e) be sworn under oath or affirmation.

Amended October 2011

## **VIII. Interpreter/ Special Assistance**

22. The appellant must provide an interpreter or assistant if he does not understand or speak English, is illiterate, is blind, is deaf or has any other special need or disability. The appellant may provide an interpreter if he so desires.

Amended October 2011

23. The Board may require the interpreter or assistant to make a solemn oath or affirmation to interpret accurately any statement made during the hearing and to translate accurately any relevant documents.

Amended October 2011

## **IX. Appeal Materials**

24. For appeals of decisions that were made after a full hearing, including appeals listed in s.6(1)(a), (c), (d) and (e) of the City of Calgary Bylaw 50M2011, provided the Board determines that the record of the hearing is adequate:

- (a) the Board will refer to and rely upon the record of the hearing and the parties to the appeal will not be required to call witnesses; and
- (b) both City administration and the appellant may call witnesses or provide additional documents subject to paragraph 45 below.

Amended July 2009

Amended January 2013

Amended October 2013

## **B. HEARING FORMAT**

25. The Board may establish its own rules of procedure to be followed with respect to an appeal on a case by case basis having regard to the nature and circumstances of the appeal, the nature of the decision appealed and the

process followed in making it, any relevant statute or bylaw, the importance of the decision appealed to the appellant, the legitimate expectations of the parties, the sufficiency of the Record and, in the discretion of the Board, any matter, in accordance with the Principles of Natural Justice.

Amended October 2011

Amended January 2013

26. Hearings normally follow a certain format. The Chair may:

- a) introduce the Board and identify all persons present;
- b) deal with public access and observers;
- c) describe the hearing process which includes:
  - the order of presentation;
  - recording of the proceedings and availability of transcripts;
  - anticipated length of hearing;
  - recesses and breaks;
  - legislative authority;
  - the decision; and
  - appeal processes; and
- d) with the Board's approval, deal with any preliminary matters.

27. The order of presentations will generally be as follows:

- opening statement by City administration outlining previous proceedings and the background to the appeal;
- presentation by the appellant including any witnesses called by the appellant;
- questions to appellant and appellant's witnesses by the Board;
- presentation by City administration including any witnesses called by City administration;
- questions to City administration and City administration's witnesses by the Board;
- appellant rebuttal;

- summation by City administration;
- summation by appellant.

The Board may allow cross-examination by the parties as determined on a case by case basis. Parties are advised that the Board may ask questions at any time during presentations.

Amended November 2008

Amended October 2011

Amended October 2013

## **C. EVIDENCE**

### **I. Authority**

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

### **II. Definition**

29. Evidence is the materials which are submitted to establish the factual basis against which legal interpretation, policy and logical reasoning will operate.
30. The information that parties bring to prove their case becomes evidence when the Board admits it into the record as evidence by either marking the document as an exhibit or hearing testimony from a witness. This evidence then becomes a fact only when the Board, as part of its decision-making process, determines what the facts are.
31. Evidence includes all means of proving or disproving any matter, eg. oral testimony, written records, demonstrations, etc. (see appendix). The term “evidence” does not include arguments on behalf of the parties (sometimes

called “submissions” and “representations”) which are made to persuade the decision-maker to take a certain view of the evidence.

32. The appendix attached to this manual indicates that there are many different types of evidence. The role of the Board is to consider all types of evidence, to weigh this evidence to determine the facts and to make a decision based on those facts. There are two types of facts, those being principle fact and evidentiary facts. Principle facts are the facts (who, what, where, when and how), a party must prove to establish a case or defense. They are the facts required to make the legal case. Evidentiary facts are those facts that make the existence or non-existence of the principle facts probable. The Board has the authority to hear or receive any evidence that it considers helpful.
33. The Board needs to hear evidence that is relevant as this helps the Board to answer part or all of what it must decide by logically proving one or more points. In addition, the evidence needs to be reliable as that will help the Board to determine the value of the evidence or to what degree it can be sure that the evidence truly and accurately depicts or describes the events.

### **III. Admissibility**

34. The Board, like most administrative tribunals, may accept all kinds of evidence. The Board is not required to accept and reject evidence based on the formal rules of evidence applicable to a civil or criminal trial.
35. The admissibility of evidence must be distinguished from the “weight” or “probative value” assigned to the evidence. Generally all relevant evidence may be accepted for consideration.
36. The probative value or weight of the evidence refers to how important it is in coming to a conclusion in the case. The only harm suffered when “weak”

evidence is accepted is a loss of time in proceeding with the case. However, it is often difficult to gauge the relevance and reliability of a particular piece of evidence until all the evidence is heard.

37. Privileged communications are not admissible in evidence, unless the beneficiary of the privilege waives the privilege. Privileged communications consist of communications between a lawyer and his/her client.

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#### **IV. Expert/ Opinion Evidence**

38. When a person is called as an expert witness by one of the parties, it is within the sole discretion of the Board to determine whether or not the person should be qualified as an expert.
39. An expert witness is a witness that has specialized knowledge gained through education and/or experience that makes his opinion on a specialized topic more reliable than other opinions. The Board is able to rely on an expert's opinion and adopt that opinion as its findings and conclusions or approach to an issue.
40. Before an expert witness is allowed to testify, it must be demonstrated that the witness is qualified to testify by having special knowledge of the subject matter of the testimony. There are no special restrictions as to any particular class of persons who may qualify as experts. Expertise may be gained through training or experience. The suitability of the expert will depend upon the topic in issue.
41. The declaring of an expert witness should be made very carefully and his/her areas of expertise should be carefully stated by the Board for the record.
42. The opinion of the expert witness and his/her qualifications should be provided to the opposing party in advance of the hearing.

## V. Oath

43. Persons giving evidence before the Board may be required by the Board to give the evidence under oath or by affirmation.

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- a) A typical oath is:

*Do you swear that the evidence you will give at this hearing shall be the truth, the whole truth, and nothing but the truth so help you God?*

- b) A typical affirmation is:

*Do you solemnly affirm that the evidence you will give at this hearing shall be the truth, the whole truth, and nothing but the truth?*

## VI. Submission

44. The parties are requested to provide a written submission prior to or at the beginning of the hearing. A submission shall state the decision which is sought from the Board and may, in addition, include:

- a) an acknowledgement of any agreed upon facts;
- b) written arguments covering legal points and authorities;
- c) any document or exhibits;
- d) the names of the witnesses the party intends to call;
- e) the estimated time that the party needs before the panel; and
- f) any preliminary matters that the party intends to raise, including any questions of jurisdiction.

## **VII. Disclosure**

45. If a party will be relying on documents as evidence, or if a party will be calling witnesses in an appeal of a decision that was made after a full hearing as described in paragraph 24 above, the documents or written notice of the name of the witness and a summary of the evidence he or she will be presenting shall be disclosed no less than 10 days prior to the hearing by delivery of copies of such documents to the Appeal Board administration and to the other parties. At the hearing, if a party intends to present written materials not previously disclosed, then that party shall make 10 copies available for distribution to the Board and the other parties. The Board may refuse to receive and consider evidence that has not been previously disclosed if, in the opinion of the Board, it would be unfair to one or more parties or to the proceedings to receive such evidence.

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## **VIII. Exhibits**

46. All materials that are tendered at the hearing should be entered as exhibits and afforded an exhibit number. The Chair may inquire if any party objects to an exhibit being entered and the basis of any objection. The Board, through the Chair, rules on the appropriateness and relevance of all exhibits and determines those that should not form part of the record.

Amended October 2011

## **IX. Protection from Giving Evidence**

47. No member of the Board shall be required by any court to give evidence relative to information obtained for the purposes of Bylaw 50M2011.

## SECTION 4 – ADJOURNMENTS

48. The Chair of the Board has the authority to decide on adjournment requests received prior to the hearing.

Amended November 2008

49. The Board shall not adjourn a hearing unless there are compelling reasons to do so or to deny an adjournment would amount to a denial of natural justice.

50. In exercising its discretion with respect to requests for adjournments, the Board must balance the rights of the appellant and respondent to a fair hearing against the public expectation of efficiency in processing appeals.

### A. COMPELLING REASONS

51. Compelling reasons for granting an adjournment may include unavailability of the appellant or respondent or their counsel due to:
- a) A recent death in the immediate family;
  - b) Serious incapacity or illness;
  - c) Court attendance required on a peremptory basis on another matter;
  - d) Unexpected or unavoidable transportation problems (e.g. bad weather);
  - e) Appellant's or respondent's counsel retained after the setting of the hearing date and the counsel is not available;
  - f) Unexpected delays in the receipt of relevant documents; or
  - g) Unavailability of material witnesses due to:
    - (1) A recent death in the immediate family,
    - (2) Serious incapacity of illness.

## **B. NON-COMPELLING REASONS**

52. Non-compelling reasons for granting an adjournment include:

- a) Absence from the City of any of the parties and/or their witnesses;
- b) Scheduling conflicts that have arisen after setting the hearing date;
- c) Insufficient time to prepare; or
- d) Unavailability of easily obtainable documents.

## **C. FACTORS BOARD MAY CONSIDER IN DETERMINING A REQUEST FOR ADJOURNMENT**

53. Some factors, which are not an inclusive list, are:

- a) Previous requests for postponements/ adjournments;
- b) When the hearing was scheduled (e.g. two months prior to date);
- c) The number and seriousness of the issues to be decided;
- d) The co-cooperativeness of the appellant/ respondent;
- e) The number of witnesses to be called;
- f) The timeliness of the application; or
- g) Whether appellant still retains licence being appealed.

## **D. CONDITIONS**

54. An adjournment may be granted with the following conditions:

- a) A hearing may be scheduled peremptory on any party.

55. In all cases, the first request for an adjournment may be granted, if justified. Subsequent requests should not be granted unless there are exceptional circumstances or compelling reasons.

## **E. PROCEDURE**

56. Requests for adjournment must be made before the commencement or continuation of the hearing. The Board will issue its decision in writing if a request for an adjournment is made prior to the hearing date. If the request for adjournment is made at the hearing, it should be determined by the Board as a preliminary matter.

## SECTION 5 – SERVICE AND FILING

### A. SERVICE OF DOCUMENTS

57. A notice or other document required by the Bylaw to be filed with The City is deemed to be properly filed if it is:
- a) delivered in person to The City of Calgary, City Appeal Boards at its office;  
or
  - b) mailed to The City of Calgary, City Appeal Boards.
58. A notice or other document required by the Bylaw to be served on any person is deemed to be properly served if it is:
- a) couriered to the address a person supplies on the appeal form; or
  - b) sent by registered mail to the address for that person stated on the appeal form or the last address known to The City of Calgary.
59. Where it is necessary to prove filing or service of any notice or document:
- a) if filing or service is effected personally or by courier, the actual date on which it is filed or served is the date of filing or service; or  
Amended June 2008
  - b) if filing or service is effected by registered mail, filing or service shall be conclusively presumed to have been effected on the date of receipt or seven days after the date of mailing, whichever first occurs.

## **B. NOTICE OF HEARING**

60. Appeal Board administration shall within 30 days of the Board hearing serve on the parties to the proceeding a notice confirming the date, time and place of the hearing.

### ***Weed Control Act* Hearing Notice**

- a) For *Weed Control Act* hearings, a notice confirming the date, time and place of the hearing will be served on the parties as required under the relevant Act.

Amended September 2009

Amended October 2011

## **SECTION 6 – BOARD DECISION AND APPEAL**

61. A decision of the Board is the final determination of an appeal. Reasons are the Board's explanation of why they made the decision they made.
62. When a Board exercises a statutory power so as to adversely affect the rights of a party, the authority shall furnish to each party a written statement of its decision setting out:
  - a) the findings of fact on which it based its decision; and
  - b) the reasons for the decision.

### **A. TIMELINE**

63. Within 60 days of the conclusion of the hearing, the Chair of the Board shall cause to be served on the parties to the proceeding a copy of the Board's decision.

### **B. MAJORITY RULES**

64. If the Board consists of more than one person, the decision of the majority is the decision of the Board.

### **C. ORAL AND WRITTEN REASONS**

65. Decisions of the Board may be given orally by the Chair immediately upon conclusion of the hearing or at the conclusion of the hearing the Board may decide to reserve its decision and to present its decision and reasons in writing.
66. Where oral reasons are delivered, the Board will provide a written confirmation of their decision.

## APPENDIX

### DEFINITION OF TERMS RELATING TO EVIDENCE

Some of the terms which arise in a discussion of the types of evidence are:

- (1) Oral evidence: Statements made by witnesses at a hearing.
- (2) Documentary evidence: Anything on which things are written or printed. All documents filed with the Board which are not in English must be accompanied by a certified correct translation, unless the Board decides otherwise.
- (3) Direct evidence: First-hand accounts of events, evidence of a fact actually perceived by a witness with his or her own sense. This is to be contrasted with hearsay and circumstantial evidence.
- (4) Hearsay evidence: Second-hand accounts of events; what someone says that another person has said, i.e. when the witness is introducing another person's statement as evidence of the truth of that statement.
- (5) Circumstantial evidence: A witness cannot always be found to prove facts from personal observation. The question in issue may then be established by proof of other facts. If sufficient other facts are proved, the court may "from the circumstances" decide the question.
- (6) Indirect evidence: Hearsay or circumstantial evidence, as contrasted with direct evidence.
- (7) Real evidence: Evidence supplied by material objects produced for inspection of the court; also known as "physical evidence".
- (8) Primary evidence of a document: The original or duplicate original document itself.
- (9) Secondary evidence of a document: Evidence of contents of a document, other than the production of the original document.
- (10) Self-serving evidence: Evidence that a witness has created for himself or herself; due to the risk of fabrication, the courts generally do not allow a witness to submit self-serving evidence. For example, a person who writes to a friend

stating that “X” caused the damage cannot normally introduce that letter in court as evidence that “X” did cause the damage.

- (11) Character evidence: A summary of the witness’ past actions, good and bad, or reputation in the community. It is natural to tend to judge whether a person is telling the truth now based on whether the person has or has not told the truth in the past or has been convicted of a criminal offence. Care has to be taken, of course, to ensure that a party is not unfairly prejudiced by the character evidence.
- (12) Probative value: Means that which furnishes, establishes, or contributes towards proof. Evidence has “probative value” if it tends to prove an issue. Evidence which is strong in proving a point is said to have “high probative value”.
- (13) Relevant evidence: Evidence which tends to make the existence of any fact in issue more probable or less probable than it would be without the evidence.