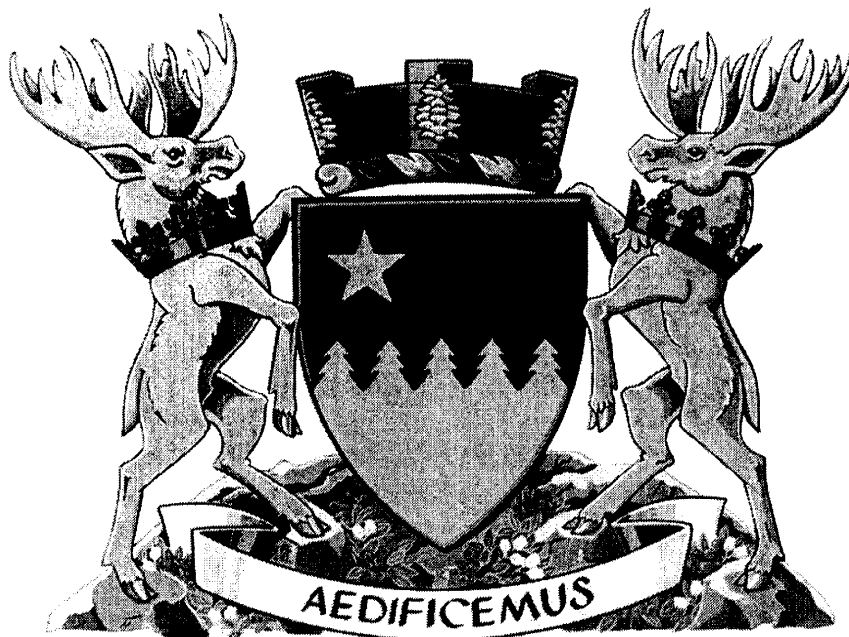


HEARING COMMITTEE CITY OF GREATER SUDBURY

GUIDE TO LICENCE APPEAL PROCEDURES BUSINESS, TAXI & LOTTERY LICENCES



CITY CLERK'S OFFICE
(2004)

GUIDE TO LICENCE APPEAL PROCEDURES

“The power to suspend or revoke a licence is more far-reaching than the power to license. It involves not only the right of the individual to engage in the activity of his choice, but it may affect a substantial investment in time and money in the building up of the licensed business, together with goodwill attached to it. When proceedings are commenced to revoke, or to some lesser extent, to suspend a licence, all this must be taken into account. It should likewise be considered in the framing of standards to be met for the procedure to be followed before a revocation or suspension order is made.”

The Honourable James Chalmers McRuer, Commissioner, *Ontario Royal Commission Inquiry into Civil Rights*, Report Number One, Volume 3, page 1097. (Toronto, 1968)

*

THIS GUIDE HAS BEEN PREPARED FOR THE CITY CLERK'S OFFICE AS A GUIDE TO ASSIST AND PROVIDE THE PUBLIC, COUNCIL AND STAFF WITH AN OVERVIEW OF THE LICENSING APPEAL PROCESS USED BY THE CITY. THE CONTENTS OF THIS PUBLICATION SHOULD NOT FORM THE BASIS OF LEGAL ADVICE OF ANY KIND. INDIVIDUALS SEEKING SPECIFIC LEGAL ADVICE SHOULD CONSULT WITH A LAWYER.

THE CONTENTS OF THIS PUBLICATION MAY NOT BE COMMERCIALY REPRODUCED, BUT ANY OTHER REPRODUCTION IS ENCOURAGED.

THIS PUBLICATION IS ALSO AVAILABLE IN THE FRENCH LANGUAGE.

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GUIDE TO LICENCE APPEAL PROCEDURES

1. INTRODUCTION

Municipalities are given authority by Part IV (sections 150-162) of the *Municipal Act, 2001* either to licence, regulate or govern local businesses operating in the municipality, or to set up a registry system with respect to such businesses. The general licensing provisions apply to the exercise of power to pass by-laws licensing businesses under any other section of the *Municipal Act, 2001* or any other statute (section 163).

In accordance with the Municipal Act and other legislation, the City Clerk's Office is responsible for providing statutory duties, as well as other services, including the issuance of business, taxi and lottery licences.

A listing of all businesses requiring licences, as well as the rules for applying and retaining licences in the City of Greater Sudbury can be obtained either by contacting the City Clerk's Office at 671-CITY (2489) during normal office hours of 8:30 a.m. to 4:30 p.m., Monday to Friday, or by accessing the City's Internet web site at <http://www.greatersudbury.ca>. Teletypewriter Number (TTY) only 688-3919. The City Clerk's Office is located on the 2nd Floor, Tom Davies Square, at 200 Brady Street in Sudbury.

Language and Accommodations Needs?

You may request to have your hearing in French. To do so, you must contact the City Clerk's Office no later than Seven (7) "Business Days" (i.e. Monday to Friday only) before the Hearing is scheduled to be held.

If you are a person with a disability, you will be provided with those resources and accommodations necessary for you to fully participate in your hearing. Such services might include sign language interpretation or notetaking services.

Applicants who require accommodations for participation at a Hearing are requested to discuss those requests with City staff upon the filing of your appeal. The City will attempt to make the necessary arrangements. The City will pay for these services directly upon receipt of an invoice from the service provider.

GUIDE TO LICENCE APPEAL PROCEDURES

WHAT IS THE HEARING COMMITTEE?

If an Applicant is unhappy with a decision regarding the refusal, revocation or suspension (these terms are defined in the Glossary of Terms, Schedule “J”) of licence for a business, taxi, lottery or other licence, he or she can appeal that decision to the Hearing Committee of the Council of the City of Greater Sudbury by completing and returning an “Appeal Request Form” (Schedule “B”) within fourteen (14) calendar days following the date of the licence refusal letter (Schedule “A”).

An appeal hearing will be scheduled with the Hearing Committee and the Applicant will be notified in writing of the date and time for the hearing by a “Notice of Hearing”. This Notice of Hearing may either be forwarded to you by prepaid registered mail or served upon you personally at the address you gave on your application.

An appeal before the Hearing Committee of the City of Greater Sudbury is less formal than a court proceeding; however, the Committee does hear evidence on behalf of both parties and has the authority to make recommendations to City Council.

Participants may include:

- Municipal By-law Enforcement Officer, or his or her designate
- Applicant
- Applicant’s solicitor/agent, if desired by Applicant
- Witnesses
- Any other individuals who have a legitimate interest in the proceedings.

The Hearing Committee may ask questions of the participants in order to clarify the evidence given during the appeal process. Ultimately, the Hearing Committee will submit to the City of Greater Sudbury Council a written recommendation on whether or not to grant to the Applicant the particular licence for which he or she has applied. The final decision to grant or refuse the licence application rests with the City of Greater Sudbury Council. The decision of the City of Greater Sudbury Council is final.

PURPOSE OF PROCEDURE GUIDE:

The purpose of this Procedure Guide is to:

- a) inform parties of the steps required to appeal decisions, disputes and/or complaints to the Hearing Committee;
- b) ensure a fair, open and accessible process;
- c) increase the efficiency and timeliness of appeal proceedings;
- d) enable the Hearing Committee to fulfill its statutory mandate; and
- e) explain the appeal hearing process in order to assist all parties in preparing for the hearing.

GUIDE TO LICENCE APPEAL PROCEDURES

OPERATING PRINCIPLES:

This Procedure Guide recognizes and responds to certain principles while adhering to the requirements established in legislation directing the activities of the Hearing Committee. These principles include:

- a) to ensure natural justice is provided to all parties;
- b) provide parties with an opportunity to be heard;
- c) simplify processes so they can be understood and followed by all parties without compromising parties' rights to natural justice;
- d) conclude each appeal in an efficient, effective and fair manner;
- e) complete the appeal process in a timely manner, to minimize the impact on the resources of all parties and to meet the time lines set out within the Procedure Guide;
- f) treat, and be seen to be treating, all parties fairly through the application of consistent procedures;
- g) provide fair and reasonable notification and communication of all steps in the process to parties involved in the process;
- h) provide opportunities and support for parties for resolve issues under dispute prior to appeals being adjudicated by the Hearing Committee;
- i) ensure the Hearing Committee's services are accessible;
- j) provide clarity of process in making and delivering decisions; and
- k) present clear decisions with clear reasons for the decisions.

APPLICATION OF PROCEDURE GUIDE:

- a) This Procedure Guide applies, in whole or in part, to appeals of licence applications under the City's business, taxi and lottery licensing by-laws.
- b) In the event of a conflict between the Procedure Guide and any statute or regulation, the Procedure Guide takes precedence.
- c) These procedures are intended to serve as a guide for the Hearing Committee and parties before the Hearing Committee and are not intended to fetter the discretion or authority of the Hearing Committee in its activities and decision-making.
- d) The Hearing Committee will consider each appeal on a case-by-case basis and exercise its discretion in the application of this Procedure Guide.
- e) Where the parties find that these procedures are not applicable to their specific case, a proposed variation of the procedure may be discussed with the Hearing Committee.
- f) Any defect or other irregularity in form does not invalidate any Hearing Committee proceeding, process or decision.

GUIDE TO LICENCE APPEAL PROCEDURES

2. NOTICE OF HEARING

1. The parties to the hearing shall be given reasonable notice of the hearing. A written "Notice of Hearing" (Schedule "C") shall be prepared and served on the applicant by the Clerk, or his or her representative, which shall include:
 - i) A statement of the time, place and purpose of the hearing;
 - ii) A reference to the statutory authority under which the hearing will be held;
 - iii) A statement that if the party notified does not attend at the hearing, the Committee may proceed in his or her absence and he or she will not be entitled to any further notice;
 - iv) A statement that the parties to the proceeding have a right to be represented by counsel or an agent, to call and examine witnesses, to present arguments and submissions and to conduct cross-examination of witnesses at a hearing reasonably required for full and fair disclosure of the facts in relation to which they have given evidence.
2. Where notice of the Hearing has been given to a party to a proceeding in accordance with this Guide and the party does not attend at the Hearing, the Hearing Committee may proceed in the absence of the party and the party is not entitled to any further notice in the Hearing.
3. An "Affidavit of Service" (Schedule "D") shall be prepared and filed appropriately by the Clerk, or his or her designate, attesting to the proper service of the "Notice of Hearing" on the Applicant and any other applicable parties.

3. PREPARING FOR HEARING

It is up to the Applicant, or his or her solicitor or agent, to present the Applicant's position with all relevant information pertinent to the matter to the Hearing Committee at the hearing. It is up to the Applicant to demonstrate clearly why he or she should receive the licence for which he or she has applied, or why the decision to suspend or revoke a licence should be overturned.

The Applicant may give evidence, call upon other individuals (witnesses) and present relevant documents. The Applicant must bring the original and sufficient copies of any documents he or she wishes to present to the Hearing Committee. If a witness for the Applicant is unable to attend, the Applicant may bring copies of the witness's statement for the Hearing Committee. The name and address of the person who wrote the statement must be included in the statement.

GUIDE TO LICENCE APPEAL PROCEDURES

3. PREPARING FOR HEARING

If the Applicant no longer wishes to appeal the City of Greater Sudbury's licence decision, the Applicant must provide written notification to the Clerk's Office at the City of Greater Sudbury. If the Applicant does not properly withdraw his or her request for a hearing and does not appear on the date set, the hearing may go ahead without the applicant.

4. CONDUCT OF THE HEARING

The following is a suggested series of steps to be followed by the Hearing Committee to ensure that all parties involved are accorded the rights given to them by virtue of the authorities pursuant to which the hearing is held.

1. The Clerk will ensure that all members of the Hearing Committee have a current copy of the relevant portions of the City of Greater Sudbury's relevant By-law, which each member shall bring to the hearing.
2. Only members of the Hearing Committee may take part in the hearing. Any other councillors who may be in attendance during the course of the hearing shall not sit with the Hearing Committee, and cannot ask questions or participate in the hearing as members of the Hearing Committee.
3. The hearing shall be convened by the Chair of the Hearing Committee (see Schedule "E").

The chair shall inquire as to whether the applicant is present and if he or she is represented by counsel or an agent.

The Chair shall advise the parties to the proceeding that they have the right to be represented by a solicitor or an agent, to call and examine witnesses, to present arguments and submissions, and to conduct cross-examinations of witnesses at a hearing reasonably required for full and fair disclosure of the facts in relation to which they have given evidence.

The Chair of the Hearing Committee shall ask the applicant if he or she wishes to have the hearing closed to the public (*in camera*) or open to the public. Depending on the reply of the applicant, the Chair shall then announce that the hearing shall proceed *in camera* or in public.

GUIDE TO LICENCE APPEAL PROCEDURES

4. CONDUCT OF THE HEARING

4. The Chair shall then advise the parties present that the hearing will proceed with the Municipal By-Law Enforcement Officer presenting the City of Greater Sudbury's case, following which the Applicant will have the opportunity to ask questions of the Municipal By-Law Enforcement Officer.

The applicant or his or her counsel or agent will then present the applicant's evidence following which the Hearing Committee shall have the opportunity of cross-examining the applicant and any witnesses who have given evidence.

5. The Hearing Committee is entitled to exercise wide powers with respect to the reception of evidence. Subject to certain exceptions, the Hearing Committee may admit as evidence, irrespective of oath or affirmation, and admissibility in a Court of Law, any oral testimony or any document or other thing relevant to the proceedings and is free to act upon such evidence. The Hearing Committee may exclude anything unduly repetitious.
6. Where the Hearing Committee is satisfied as to its authenticity, a copy of a document or other thing may be admitted as evidence at a hearing and shall be marked as an exhibit. Where a document has been filed in evidence at a hearing, the Hearing Committee may, or the person producing it or entitled to it may, with the leave of the Hearing Committee, cause the document to be photocopied and the Hearing Committee may authorize the photocopy to be filed in evidence in place of the document filed.
7. The Chair may adjourn the hearing from time to time on Motion of the Hearing Committee or where it is shown to the satisfaction of the Hearing Committee that the adjournment is required to permit an adequate hearing to be held.
8. The City of Greater Sudbury's case shall be presented first by the Municipal By-Law Enforcement Officer, or his or her designate.
9. The Chair of the Hearing Committee shall then advise the applicant that he (or she) or the applicant's solicitor (or agent) (but not both) shall have the opportunity to cross-examine the Municipal By-Law Enforcement Officer. This is an opportunity to ask questions not to give evidence.
10. Members of the Hearing Committee may then ask the Applicant any questions they have of the Municipal By-Law Enforcement Officer.
11. The Applicant may then give evidence as to why he or she should be granted a licence.

GUIDE TO LICENCE APPEAL PROCEDURES

4. CONDUCT OF THE HEARING

12. The Chair at this time should advise the applicant that he or she may call and examine witnesses.
13. The Applicant and his or her witnesses are subject to cross-examination by the Municipal By-Law Enforcement Officer and the members of the Hearing Committee.
14. Following the receipt of all evidence, the Municipal By-Law Enforcement Officer should be invited to sum up his or her presentation or offer any additional argument relevant to the appeal.
15. The Applicant or his or her solicitor or agent should then be invited to sum up his or her presentation or offer any additional argument relevant to the appeal.
16. The Hearing Committee shall then request the Applicant, his or her Solicitor or agent, and the Municipal By-Law Enforcement Officer to leave the room in order for the Hearing Committee to consider the applicant's appeal *in camera*.
17. Upon reaching its decision, the Hearing Committee shall rise from its *in camera* session, recall the parties to the proceeding and any members of the public in attendance, and announce in public its recommendation, which will be in the form of minutes and include a written motion (see Schedule "E"). The motion shall be duly moved and seconded, read aloud and voted on in public. Any recommendation adopted by the Hearing Committee must be passed by a simple majority of the Hearing Committee.

The Hearing Committee has the authority to approve the Applicant's licence application, approve the application on specified conditions (which should be contained within the recommendation), or refuse the application.

18. The hearing should then be adjourned.
19. Should the Hearing Committee resolve to recommend the approval of the licence application of the Applicant, the Applicant may be given a provisional licence conditional on the final approval of the City of Greater Sudbury Council, if directed to do so by the Hearing Committee.
20. The Secretary of the Hearing Committee shall, as soon as practicable after the conclusion of the appeal hearing, prepare a written report to City of Greater Sudbury Council in the form of minutes summarizing the hearing and the recommendations, if any, of the Hearing Committee with reasons therefore on the merits of the appeal in respect of which the hearing had been conducted.

GUIDE TO LICENCE APPEAL PROCEDURES

4. CONDUCT OF THE HEARING

24. The Council of the City of Greater Sudbury shall consider the recommendation of the Hearing Committee and shall make the final decision on whether a licence shall be issued and may make any decision that it might have done had Council conducted the hearing itself.
25. Written confirmation of the final decision of the City of Greater Sudbury Council will be forwarded as soon as possible to the Applicant. (see Schedules "G" and "H").
26. Should the Applicant be successful in his or her appeal, he or she will be granted the requested licence.
27. The decision of the City of Greater Sudbury Council is final.



GUIDE TO LICENCE APPEAL PROCEDURES

SCHEDULE "A"

Sample "Approval/Denial Letter"

November 15, 2004.

Mr. John Smith
123 Jones Lane
Sudbury ON P3B 1L8

Dear Mr. Smith:

Please be advised that your application dated October 23, 2004 for a:

- Taxi Licence**
- Business Licence for *(insert business name)* at *(insert business address)***

has been:

- Approved**
- Conditionally Approved on the below-noted Condition(s)**
- Denied**

If your application has been approved, you may contact the City Clerk's Office located on the 2nd Floor, Tom Davies Square, at 200 Brady Street, in Sudbury between 8:30 a.m. and 4:30 p.m. to obtain your licence.

If your application has been denied, you may appeal by completing the enclosed "Appeal Request" Form and returning it to the City Clerk's Office located on the 2nd Floor, Tom Davies Square, at 200 Brady Street in Sudbury within fourteen (14) days of the date of this letter and the matter will be referred to the Hearing Committee of the City of Greater Sudbury. You will be advised by a written "Notice of Hearing" of the date and time scheduled for your appeal.

Yours very truly,

Enc. "Appeal Request"

SCHEDULE "B"

Appeal Request Form

Please complete this Appeal Request Form within fourteen (14) days of the date of letter of licence refusal.

Calculating time periods means: (1) where there is a reference to a number of days between two events, they shall be counted by excluding the day on which the first event happens; and (2) where time expires for appealing a licence refusal on a holiday, the "Request for an Appeal" may be filed the next day that is not a holiday. Holiday means Saturdays, Sundays and any statutory holiday

Your request should be mailed, delivered or faxed to:

City Clerk's Office, City of Greater Sudbury
2nd Floor, Tom Davies Square, 200 Brady Street
P.O. Box 5000 Stn A, Sudbury ON P3A 5P3
Telephone: (705) 671-2489, Facsimile: (705) 671-8118, TTY: (705) 688-3919

Please Print Clearly Using Dark Ink

I request a hearing to appeal the City of Greater Sudbury's refusal to grant me or my company a _____ (insert licence type) refused on _____ (insert date of letter of refusal of original licence application).

Name: _____
Family/Last Name(s) First Name(s)

Company Name: _____
(if applicable)

Address: _____
Street

City Province Postal Code
Telephone Number: (Home) () _____
(Work) () _____
Fax Number: (Home) () _____
(Work) () _____

NOTES:

1. Please notify the City Clerk's Office at the City of Greater Sudbury in writing immediately if you change your address, telephone or fax number. If using a fax you should set your fax machine to print a journal or receipt that the transmission was received.
2. If you wish to have your hearing in the French Language, please contact the Clerk's Office no later than seven (7) Business Days before the Hearing date.
3. Applicants with disability needs should contact the Clerk's Office immediately upon receipt of this Notice.

SCHEDULE "C"

Sample "Notice of Hearing"

IN THE MATTER OF an Application by John Smith for a ***Taxi Licence***

AND IN THE MATTER OF a hearing pursuant to the *Statutory Powers Procedure Act*, section 5(1) of the *Municipal Act, 2001* and By-law No. "XXXX" of the City of Greater Sudbury.

NOTICE OF HEARING

TAKE NOTICE THAT the Hearing Committee of the Council of the City of Greater Sudbury hereby, appoints Monday the 21st day of April 2004 at the hour of 10:00 a.m. in the forenoon in Committee Room B, Tom Davies Square 200 Brady Street, Sudbury, Ontario, for the hearing to consider the application of John Smith for a Taxi Driver's Licence, in accordance with By-law "XXXXX".

If you do not attend at this hearing either personally or by counsel or an agent, the Committee may proceed in your absence and you will not be entitled to any further notice of the proceedings.

At the hearing, you are entitled to call evidence, examine witnesses and be represented by counsel or an agent.

DATED at the City of Greater Sudbury this 30th day of March 2004.

Committee Secretary

Copy:

Municipal By-Law Enforcement Officer

Hearing Committee Members:

Councillor _____

Councillor _____

Councillor _____

SCHEDULE "D"

Sample "Affidavit of Service"

IN THE MATTER OF an Application by John Smith for a *Taxi Licence*

AND IN THE MATTER OF a hearing pursuant to the *Statutory Powers Procedure Act*, section 5(1) of the *Municipal Act, 2001* and By-law No. "XXXX" of the City of Greater Sudbury.

I, JANE DOE of the City of Greater Sudbury and Province of Ontario, HEREBY MAKE OATH AND SAY:

1. THAT I am a Municipal By-Law Enforcement Officer employed by the City of Greater Sudbury.
2. THAT on Monday, November 9, 2004, at 2:28 o'clock in the afternoon, I did personally serve the above-mentioned appellant with the **Notice of Hearing**, attached hereto as Exhibit "A" by leaving a copy with the spouse of the said JOHN SMITH at the premises municipally known as 123 Main Street in the City of Greater Sudbury, which was the address given by the said JOHN SMITH as his place of residence on the "Application for Taxicab Driver's Licence".
3. THAT I was able to identify the spouse of JOHN SMITH by means of her so informing me that she was the spouse of the said JOHN SMITH, and further that, the person who identified herself as the spouse of JOHN SMITH appeared to be an adult member of the household in which JOHN SMITH is residing.

SWORN BEFORE ME AT THE)
CITY OF GREATER SUDBURY,)
THIS 10TH DAY OF)
NOVEMBER, 2004.)

JANE DOE

A Commissioner, Etc.

SCHEDULE “E”

“Duties of the Chair”

The hearing shall be convened by the Chair of the Hearing Committee who shall state the purpose of the hearing in words similar to the following:

“This is a hearing of the Hearing Committee of the City of Greater Sudbury to hear the appeal of (*insert name*) with respect to the refusal to grant him (*or her*) a licence (*insert licence specifics*).”

“Is the Applicant present?”

No. Once it has been demonstrated that the Applicant has been properly served with a “Notice of Hearing” (see “Affidavit of Service”), the Hearing may proceed without the Applicant.

Yes.

“Is the Applicant represented by a solicitor or an agent?”

“The parties to this proceeding have the right to be represented by a solicitor or an agent, to call and examine witnesses, to present arguments and submissions, and to conduct cross-examinations of witnesses at a hearing reasonably required for full and fair disclosure of the facts in relation to which they have given evidence.”

“Does the Applicant wish to have the hearing closed to the public (*in camera*) or open to the public?”

No. The hearing shall proceed in public.

Yes.

Resolution 04-01: That the Hearing Committee of the City of Greater Sudbury move “*in camera*” to consider the licence appeal of John Smith.

“Carried”

The Chair shall then advise the parties present that the hearing will proceed as follows:

“Inasmuch as the onus is upon the applicant to satisfy the Hearing Committee that this appeal should be granted, the City of Greater Sudbury shall present evidence first, following which the applicant or his or her counsel or agent will have the opportunity to ask such questions as are relevant to this appeal. The applicant or his or her counsel or agent will then present the applicant’s

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evidence following which the Hearing Committee shall have the opportunity of cross-examining the applicant and any witnesses who have given evidence.”

The Chair may adjourn the hearing from time to time on Motion of the Hearing Committee or where it is shown to the satisfaction of the Hearing Committee that the adjournment is required to permit an adequate hearing to be held.

Once the Municipal By-Law Enforcement Officer has completed the presentation of the City of Greater Sudbury’s case:

“The Applicant (or his or her solicitor or agent, but not both) may cross-examine the Municipal By-Law Enforcement Officer. Please remember that this is an opportunity to ask questions not give evidence. You will have an opportunity to present your case.”

“Do members of the Hearing Committee have questions for the Municipal By-Law Enforcement Officer?”

The Applicant may then give evidence as to why he or she should be granted a licence.

“The Applicant (or his or her solicitor or agent) may now call and examine witnesses, or speak on his or her own behalf.”

The Applicant and his or her witnesses are subject to cross-examination by the Municipal By-Law Enforcement Officer and the members of the Hearing Committee.

“Do the members of the Hearing Committee or the Municipal By-Law Enforcement Officer have any questions for the Applicant?”

Following the receipt of all evidence, both the Municipal By-Law Enforcement Officer and the Applicant should be invited to sum up their presentations or offer any additional argument relevant to the appeal.

“I would ask at this time the Municipal By-Law Enforcement Officer to sum up his (or her) presentation.”

“I would now ask the Applicant to sum up his (or her) presentation.”

“The Hearing Committee will now consider the Applicant’s appeal. I would ask that the Applicant (and his or her solicitor or agent) and the Municipal By-Law Enforcement Officer to leave the hearing room so that the Committee may consider this appeal.”

Upon reaching its decision, the Hearing Committee shall rise from its *in camera* session, recall the and any members of the public in attendance, and announce in public its recommendation, which will be in the form of a written motion. The motion shall be duly moved and seconded, read aloud and voted on.

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“The matter of the licence application of John Smith has been considered and the following resolution was presented:

Resolution 04-02: That John Smith be issued a licence and that a provisional licence be issued forthwith pending a final decision by the City of Greater Sudbury Council”

“Carried”

The hearing should then be adjourned.

Resolution 04-03: That this meeting of the Hearing Committee does now adjourn.”

“Carried”

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SCHEDULE "F"

Sample "Minutes of the Hearing Committee"

Report of the Hearing Committee of the City of Greater Sudbury

**Committee Room C-13A
Tom Davies Square
November 15, 2004.**

**Commencement: 6:30 p.m.
Adjournment: 7:25 p.m.**

Councillor White, in the Chair

Present: Councillors Black and Watkins
Municipal By-Law Enforcement Officer Brown

Applicant, John Smith and his solicitor, Allan Jones

Regrets: None

IN THE MATTER OF THE TAXI LICENCE APPEAL BY JOHN SMITH

A copy of the Applicant's criminal record and "Notice of Hearing" were provided to each member of the Hearing Committee.

The Chair outlined the procedure to be followed for the hearing of Mr. Smith's appeal.

The Chair then advised Mr. Smith and his solicitor that the hearing could be conducted "*in camera*" should they so desire.

Mr. Jones, solicitor for the Applicant, John Smith, advised the Chair that they wished the appeal hearing to be conducted "*in camera*".

Resolution 04-01: That the Hearing Committee of the City of Greater Sudbury move "*in camera*" to consider the Taxi Licence of John Smith.

CARRIED

Chief Municipal By-Law Enforcement Officer Brown advised Hearing Committee members that Mr. Smith had authorized the City of Greater Sudbury Police to release details of his criminal record to the City of Greater Sudbury.

Chief Municipal By-Law Enforcement Officer Brown then advised Hearing Committee members that under the terms of by-law _____, the Applicant, Mr. Smith, been refused a Taxi Licence due to criminal convictions, including breach of recognizance, trafficking a narcotic, possession of a narcotic and driving while intoxicated.

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Because of the nature of the convictions and the nature of the licence applied for by Mr. Smith, the application had been refused. Mr. Smith subsequently filed an "Appeal Request Form" form within the appropriate timeframe and this hearing was scheduled.

Mr. Jones, solicitor for the Applicant, John Smith, submitted the following correspondence in support of the application for a Taxi Licence:

1. Letter dated November 2, 2004 from Norma Bay, Case Management Officer, advising that Mr. Smith has been under her supervision since January 2004 and that there have been two violations since his release.

In summary, Mr. Jones advised that, although Mr. Smith does have a criminal record, he is attempting to upgrade both his educational and work skills.

Municipal By-Law Enforcement Officer Brown questioned the Applicant as to the terms of his probation.

The Applicant, John Smith, replied that he must undergo regular urinalysis testing to ensure that he is drug free and must sign in with the City of Greater Sudbury Police on a monthly basis.

Councillor Black questioned the Applicant as to the length of his probation.

The Applicant, John Smith, replied that his probation will end on January 25, 2005.

The Chair then inquired if there were any further questions of the Applicant to staff or from members of the Hearing Committee. There being none, the Chair thanked the Applicant and his solicitor for their attendance and advised them that they could learn of the Hearing Committee's recommendation by waiting for the Hearing Committee to reconvene after a brief recess or receive written notice by mail.

At 7:10 p.m., the Applicant, John Smith, and his solicitor, Allan Jones, left the hearing room.

At 7:12 p.m., the Committee agreed to a brief recess.

At 7:15 p.m., the meeting reconvened.

The Chair advised that the matter of a Taxi Licence application for John Smith had been considered and the following resolution was presented:

Resolution 04-02: That, due to the nature of his convictions and the nature of the licence applied for, John Smith should not be issued a Taxi Licence as it is not in the public's safety to do so.

CARRIED

GUIDE TO LICENCE APPEAL PROCEDURES

Resolution 04-03: That this meeting of the Hearing Committee does now adjourn.
Time: 7:25 p.m.

CARRIED

Chair

Secretary

SCHEDULE "G"

NOTICE OF DECISION

Sample "Successful Appeal Letter"

November 30, 2004.

Mr. John Smith
123 Jones Lane
Sudbury ON P3B 1L8

Dear Mr. Smith:

Further to appeal to the Hearing Committee of the City of Greater Sudbury and the subsequent meeting of the City of Greater Sudbury Council, please be advised that you have been approved for a *(insert licence specifics)* *(or, you have been approved for a Taxi Licence on the following conditions)*

You may attend at the City Clerk's Office located on the 2nd Floor, Tom Davies Square, at 200 Brady Street in Sudbury between 8:30 a.m. and 4:30 p.m. Monday through Friday to obtain your taxi licence.

Please contact the City Clerk's Office at (705) 671-CITY (2489) during regular office hours of 8:30 p.m. to 4:30 p.m. should you have any further questions or concerns with respect to this matter.

Yours very truly,

c.c. Hearing Committee
Municipal By-Law Enforcement Officer Brown

SCHEDULE “H”

NOTICE OF DECISION
Sample “Unsuccessful Appeal Letter”

November 30, 2004.

Mr. John Smith
123 Jones Lane
Sudbury ON P3B 1L8

Dear Mr. Smith:

Further to appeal to the Hearing Committee of the City of Greater Sudbury and the subsequent meeting of the City of Greater Sudbury Council, please be advised that your appeal of the denial of your application for a Taxi Licence has been denied. The City of Greater Sudbury will not be issuing you a Taxi Licence at this time as the City of Greater Sudbury believes that it is not in the public’s best interest or safety to grant you such a licence because of your criminal convictions and the nature of licence for which you have applied.

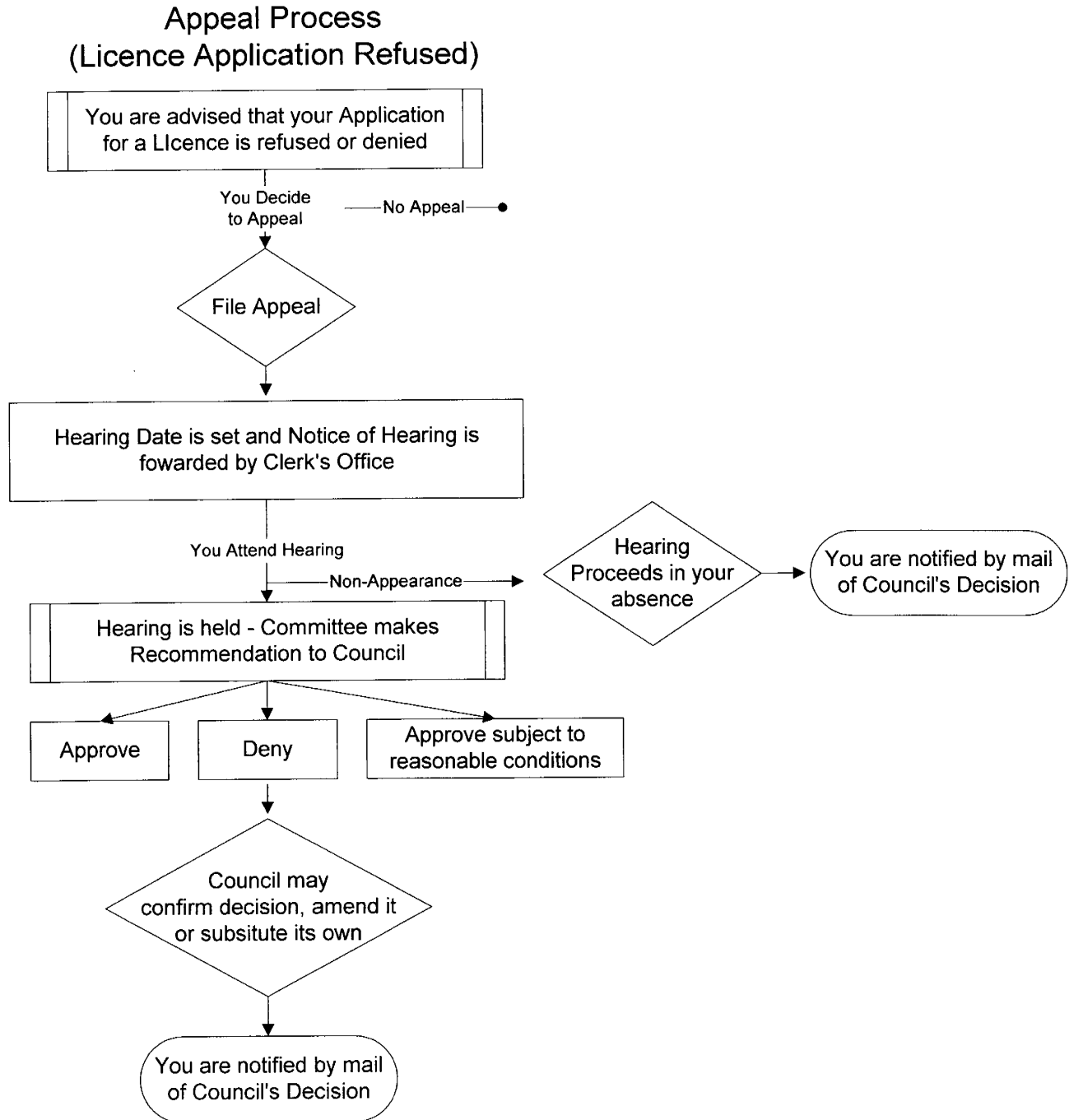
Please contact the City Clerk’s Office at (705) 671-CITY (2489) during regular office hours of 8:30 p.m. to 4:30 p.m. should you have any further questions or concerns with respect to this matter.

Yours very truly,

c.c. Hearing Committee
Chief Municipal By-Law Enforcement Officer Brown

GUIDE TO LICENCE APPEAL PROCEDURES

SCHEDULE "I"



SCHEDULE “J”

“Glossary of Terms”

Affidavit of Service – An affidavit certifying that a document has been served on a party to a proceeding.

Agent – One who acts for another whether for any form of remuneration or not.

Common Law – Judge-made law as opposed to legislation passed by the legislature.

Discretion – The authority or power to make decisions according to the rules of reason and justice, not according to private opinion.

Evidence – Information can be considered by the trier of fact solely where it is “admissible”. Evidence is admissible only if it relevant to a material issue in the case.

Hearing Committee – Council has established a Hearing Committee consisting of three (3) Members of Council (called “Councillors”) for the purpose of hearing licensing appeals. One of the Councillors will act as the Chair of the Hearing Committee.

In Camera – A hearing that is held in private and is not open to the public; only those persons directly involved in the hearing are entitled to remain. During a hearing sensitive personal information may be disclosed and reviewed by the Hearing Committee. You may wish to have this material remain private to the Hearing Committee; if so, then you should request that your hearing be held *in camera*.

Natural Justice – Basically the right to be heard and the right to a hearing from an unbiased tribunal.

Onus – Burden of proof. Establishing a case.

Quasi-Judicial – With respect to a function, one that is partly administrative and partly judicial such as investigating facts, ascertaining that fact exist, holding hearings and drawing conclusions to guide official action from them and exercising discretion in a judicial way.

Reasonable – Implies a reason related to the purpose of the regulation, a rational connection between purpose and action. It also implies a qualification on the nature of the action taken, that it be reasonable in the circumstances.

SCHEDULE “J”

“Glossary of Terms”

Refusal – When the City refuses to licence you that means that the City has rejected or denied your application for a licence. Where the City refuses to licence you (or revokes or suspends your licence) you have a right to know why and, if not satisfied with the explanation, you also have the right to appeal that decision to the Hearing Committee of Council.

Revocation – Your right to continue having a licence is cancelled. When your licence is cancelled you cannot continue to operate your business, drive a taxi, or conduct a lottery event. To do so would be an offence under the by-law.

Suspension – Your right to have a licence is temporarily withdrawn for a period of time, either until you fully comply with the requirements of the particular by-law or until a hearing is held to determine your right to continue to hold the licence. While your licence is under suspension, you are not allowed to continue to operate your business, drive a taxi, or conduct a lottery event unless agreed to by the City. To do otherwise would be an offence under the by-law.

