



EDMONTON
TRIBUNALS

*Community
Standards &
Licence Appeal
Committee*

Community Standards and Licence Appeal Committee

Procedures and Guidelines Manual

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PREFACE

The Procedures and Guidelines Manual is primarily for the use of members of the Community Standards and Licence Appeal Committee (Committee). The Manual also provides insights into what to expect for people appearing before the Committee.

The Manual addresses administrative, procedural and legal matters that commonly affect the hearing process. The Committee is governed by several laws enacted by the Government of Alberta and the City of Edmonton Council, including:

Municipal Government Act R.S.A. 2000 Chapter M-26

Weed Control Act S.A 2008 Chapter W-5.1.

Weed Control Regulation; Alta Reg 19/2010

Community Standards and Licence Appeal Committee Bylaw 19003

Business Licence Bylaw 20002

Animal Licensing and Control Bylaw 13145

Community Standards Bylaw 14600

Vehicle for Hire Bylaw 17400

The provisions in this Manual are intended to be directory and not mandatory. If there is a conflict between the Manual and any of the laws cited above, then those laws will prevail.

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SECTION 1 - THE COMMITTEE AND ITS POWERS

The Committee means the Community Standards and Licence Appeal Committee established pursuant to the *Municipal Government Act*, R.S.A. 2000 Chapter M-26 (the “MGA”) and the *Community Standards and Licence Appeal Committee Bylaw* 19003 (the “CSLAC Bylaw”).

Section 1 of the *CSLAC Bylaw* states that the purpose of the Committee is to decide reviews and appeals from decisions of certain City of Edmonton administrators on behalf of City Council.

A. THE COMMITTEE

I. Establishment of the Committee

The Committee is established by the *CSLAC Bylaw* and authorized to hear requests for reviews and appeals of:

- a. The refusal, revocation, suspension of, or imposition of conditions on a business licence or any licence pursuant to the following bylaws:
 - i. *Animal Licensing and Control Bylaw* 13145
 - ii. *Business Licence Bylaw* 20002
 - iii. *Vehicle for Hire Bylaw* 17400
- b. Orders issued pursuant to Section 545 of the *MGA* regarding contraventions of other bylaws or enactments that the City is authorized to enforce;
- c. Orders issued pursuant to Section 546 of the *MGA*;
- d. Notices issued under Section 29.2 of the *Community Standards Bylaw 14600* (outdoor fires); and
- e. Notices issued under the provincial *Weed Control Act* S.A 2008 Chapter W-5.1.

II. Committee Members, Panels and Quorum

The *CSLAC Bylaw* provides that the Committee consists of up to ten individuals appointed annually by City Council.

The maximum panel size for a Committee is three members. The Quorum for a Committee meeting is also three members. If quorum is not possible or lost for any reason then the Committee hearing will be rescheduled as soon as practicable.

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B. POWERS

The powers and jurisdiction of the Committee are defined in the *CSLAC Bylaw*, the *MGA* and other City of Edmonton bylaws. In exercising the authority delegated to it in the *CSLAC Bylaw* the Committee commonly makes the following types of decisions:

- a. direct that a licence be issued;
- b. direct that the cancelled licence be reinstated;
- c. remove or vary a suspension of a licence;
- d. cancel or suspend a licence;
- e. remove, impose or vary conditions on a licence and licensee; or
- f. uphold, substitute, cancel or vary an order or notice issued under Sections 545 or 546 of the *Municipal Government Act*; Section 29.2 of the *Community Standards Bylaw*; or the *Provincial Weed Control Act*.

The Committee has no authority to issue any order for costs except with respect to the refund of the cost of an appeal relating to a Weed Control Notice or a Debt Recovery Notice.

The Committee is not a decision maker listed in the Designation of Constitutional Decision Makers Regulation enacted under the *Administrative Procedures and Jurisdiction Act* RSA 2000, A-3 as amended. Consequently, the Committee has no authority to make any decisions on any questions of constitutional law including constitutional law relating to the Charter.

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SECTION 2 - PRINCIPLES OF NATURAL JUSTICE

The principles of natural justice which include the right to be heard and the rule against bias apply for the benefit of all parties participating in hearings before the Committee.

A. THE RIGHT TO BE HEARD

All parties have the right to be heard.

The content of the right to be heard varies with the circumstances and may include many elements such as the entitlement to: reasonable notice of the hearing and of the case against you; a fair hearing; counsel; disclosure of evidence; opportunity to bring other parties or participants and present relevant evidence; and, receipt of reasons for the Committee decision.

The fundamental question that the Committee must ask itself is whether or not the affected party has been given an adequate opportunity to know the case against them and to present their case.

B. THE RULE AGAINST BIAS

The rule against bias provides that all parties are entitled to have an impartial decision-maker.

The rule guards against situations involving actual bias and situations which raise a reasonable apprehension of bias.

Each case of bias must be determined by the Committee based on the specific circumstances the arguments presented.

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 participant;
- b. business relationship with a party or a participant;
- 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); or,
- f. expression of views reflecting a predisposition to decide a specific case a certain way.

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Committee members must not prejudge any case, nor have a personal interest in the outcome of any case. If a Committee member feels they cannot keep an open mind or they have an interest in the outcome of the case, then that member must step down.

If, after hearing from the parties, the Committee determines that a member must step down due to a real bias or a reasonable apprehension of bias, the hearing will be halted and that member will have no further involvement in the matter. Further, as the removal of a member will result in a loss of quorum, the hearing may need to be rescheduled if a replacement panel member is not available. If the hearing is rescheduled on another date the new panel may or may not include the other members of the earlier panel.

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SECTION 3 - COMMITTEE HEARING

A. GENERAL HEARING PROCEDURES

The MGA states that Committee hearings are open to the public and Committee Decisions must be voted upon and given publicly. Committee members may go in private for matters such as deliberations or legal advice.

The Committee has flexibility respecting the procedures that it follows. Section 12 of the CSLAC Bylaw states that the Chair may approve hearing procedures and that panels may modify, waive or supplement any procedure approved by the Chair.

All parties have the opportunity to present their case and their evidence to the Committee. The Committee hearing is not a trial and the strict legal rules of evidence that apply in courtrooms do not apply.

Cross-examination of parties or participants by the other parties is not allowed; however, Committee members may ask questions of any party or participant to clarify matters or question the evidence.

I. Parties

The parties to a hearing are determined by the specific type of appeal or review that is being heard.

II. Proceedings Before the Committee

Parties may provide written materials to the Committee in advance of the Committee hearing. Parties also have the opportunity to appear before the Committee and personally present evidence as well as oral or written submissions to the Committee during the hearing.

III. Representation at Hearing

All parties are entitled to be represented by an agent or counsel (a lawyer).

Proof of the agency will be required to the satisfaction of the Committee. Proof may consist of the party's verbal confirmation, a letter of agency, a power of attorney, or other evidence or document showing that the agent has the authority to act on behalf of the party.

IV. Non-Attendance by Appellant, Respondent or Administration

If a party does not attend the scheduled hearing, the Committee may proceed to determine the matter in the absence of that party, upon confirming that the party was provided a Notice of Hearing in compliance with this Guide and subject to consideration of overall fairness.

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If a party that is not in attendance has submitted written material, the Committee may proceed to determine the matter based on that written material and the submissions and evidence submitted by the other parties and participants.

V. Public Access

Hearings before the Committee are open to the public unless (on the application of any party or at its own discretion) the Committee decides, in compliance with section 197 of the MGA, that it would be advisable to hold a particular hearing or portion thereof in private.

VI. Recording of Hearings

Hearings of the Committee may be recorded.

A party may request a copy of the audio recording.

If a request for the recording has been made, the Committee will attempt to accommodate the request by providing it in various forms of electronic media, based on the ability of the Committee and the desire of the party. An administration fee may be required to recover administrative and material costs.

VII. Media Protocol

Subject to section 3.A.V of this Manual, media are entitled to attend Committee hearings and to sit in the public seating area.

Interviewing of the parties will not be allowed in the hearing room.

Members of the Committee should not comment on matters under appeal or review.

VIII. Additional Participants

Any additional participants to a hearing should sign in with the Clerk of the Committee prior to the hearing. No party has the right to cross examine another party; however, during their presentation, parties may suggest questions for the Committee to ask the other party or participant.

IX. Translation and Hearing Impaired Services

Participants may bring a translator if they do not understand or speak English.

The Committee may require the translator to make a solemn affirmation to accurately interpret and communicate oral statements and documents provided to the Committee.

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The City of Edmonton makes various services available for people that are hard of hearing or deaf. The Committee will make best efforts to accommodate these issues. Typically a minimum of two weeks notice is required when requesting these services. For more information on requesting this assistance see the website:

https://www.edmonton.ca/programs_services/for_people_with_special_needs/services-hard-of-hearing-or-deaf.aspx

X. Hearing Format

Committee hearings can be held by a variety of formats or a combination of formats, such as in person, video conference, telephone conference, or other electronic means of communication.

Parties will be advised in the Notice of Hearing, of the format of the hearing and about how they can attend.

If the Notice of Hearing indicates that the matter is scheduled to proceed in person, the Committee members will attend in person. However if a circumstance prevents a Committee member from attending the hearing in person, they may join the hearing through an electronic format as long as the majority of the Committee members attend in person.

The Chair or Presiding Officer will introduce the members of the Committee and will identify their names and the method by which the members are participating in the hearing.

Any members of the public wishing to observe or attend a hearing, may contact the CSLAC office for further instruction.

B. PRELIMINARY ISSUES

I. Preliminary Matters:

The Committee may be required to deal with various types of preliminary matters including:

- a. Whether a request for review or an appeal was filed within the allowable time limit;
- b. Whether the party has authority to appeal or request a review;
- c. Whether a participant has the appropriate authority to act as an agent on behalf of a party;
- d. Whether an interim stay should be revoked; or

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- e. Whether a postponement ought to be granted.

Where practical, a separate hearing on a preliminary matter may be heard in advance of the date previously scheduled for the Committee hearing on the merits. Alternatively, a preliminary matter may be heard on the date of the Committee hearing on the merits.

C. EVIDENCE

I. Authority

The Committee has the authority to determine the facts in each case.

Parties may provide evidence and submissions in any form or manner.

The Committee is not bound by the strict legal rules of evidence that apply in court proceedings. The decision to receive evidence is guided by the principles of fairness with consideration of prejudice to the parties.

The Committee will assess the relevance, reliability and persuasive value of all submitted evidence and material and render its decision in accordance with the evidence and submissions it has received in the course of the proceeding.

II. Timelines

Timelines for the submission of evidence and supporting submissions vary depending on the type of appeal or review proceeding. See Section 4 and Section 5 of the Manual. Notwithstanding those sections, the receipt of evidence is always governed by the principles of fairness and the potential for prejudice to any of the parties.

SECTION 4 - SCHEDULING AND HEARING

MGA Orders/Weed Control Act/Community Standards Hearings

This section applies to reviews of orders and notices issued by the City pursuant to Sections 545 and 546 of the MGA, Section 29.2 of the Community Standards Bylaw and the *Weed Control Act*

I. Scheduling

Municipal Government Act Order Reviews and Nuisance Fire Notices

If a request for review of an order issued under Section 545 or 546 of the MGA or a notice issued pursuant to section 29.2 of the Community Standards Bylaw is received at least 10 days before next scheduled meeting of the Committee, then the hearing will be set for that meeting, unless the parties agree to another date.

If a request for review is received less than 10 days before the next scheduled meeting of the Committee, then the request for review will be scheduled on the date of the earliest subsequently scheduled meeting of the Committee, unless the parties agree to another date.

Weed Control Act Notice Appeals

If an appeal of a Weed Control Notice is received, the hearing will be set for the earliest scheduled meeting of the Committee that is at least 5 days after the date that the appeal was received, unless the parties agree to another date.

II. Notice of Hearing

A Notice of Hearing must state the date, time, place, format and ways to participate in the hearing and must be served on the parties as required under the relevant legislation and in accordance with this Manual. A Notice of Hearing may be sent via email or regular mail and is subject to the rules for Service below in section 8 of this Manual.

III. Submissions / Pre-hearing Disclosure

The receipt of evidence is guided by the interests of fairness. The parties are asked to provide written submissions and supporting evidence to the Committee by the Friday immediately prior to the hearing date, so that materials may be provided, if possible, to the Committee members and other parties in advance of the hearing.

New, updated and supplemental oral and written evidence in electronic or paper form may be provided at the Committee hearing.

IV. Hearing Procedure

At the commencement of the Hearing, the Chair will:

- a. introduce the Committee and identify all persons present;
- b. deal with public access and observers;
- c. identify the matter under review or appeal;
- d. describe the hearing process which may include:
 - i. the order of presentation
 - ii. recesses and breaks
 - iii. legislative authority
 - iv. the decision; and,
- e. deal with any preliminary matters.

V. Withdrawal and Cancellation

If the Appellant withdraws the review or appeal (in writing or in person), then the Committee will cancel the request for review or appeal.

VI. Parties

The parties to hearings held pursuant to *Municipal Government Act* Section 545 and 546 hearings, *Weed Control Act* hearings and Section 29.2 of the Community Standards Bylaw are:

- a. the appellant or applicant; and,
- b. the respondent, City of Edmonton.

Hearings are open to the public and others such as observers, interested parties, interpreters, or other participants may attend.

VII. Order of Presentation

Matters of procedure are decided by the Committee and guided by the interest of fairness. In the usual course, the hearing proceeds in the following order:

- a. Presentation by the appellant/applicant followed by questions to the appellant/applicant by Committee members;
- b. Presentations by interested parties in favour of the appellant's position followed by questions to interested parties in favour of appellant by Committee members;
- c. Presentation by the respondent followed by questions to the respondent by Committee members;
- d. Presentations by interested parties in favour of the respondent's position followed by questions to interested parties in favour of respondent by

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Committee members;

- e. Reply by the appellant/applicant, who is given the last opportunity to speak to information raised during the hearing, followed by questions to the appellant/applicant by Committee members.

SECTION 5 - SCHEDULING AND HEARING

Licencing Hearings

This section applies to appeals of licensing decisions made under the *Animal Licensing Bylaw*, the *Business Licence Bylaw* and the *Vehicle for Hire Bylaw*.

I. Scheduling

If an appeal of a licensing decision is received by the Committee, then a Committee hearing will be set for the next available Committee hearing date that is at least **30 days** from the date the appeal was received, unless the parties agree to another date.

II. Notice of Hearing

No later than **21 days** before the date set for the Committee hearing, a Notice of Hearing stating the date, time, place, format and ways to participate in the hearing must be served on the parties as required under the relevant legislation and in accordance with this Manual.

A Notice of Hearing may be sent via email or regular mail and is subject to the rules for Service below in section 8 of this Manual.

III. Pre-hearing Disclosure and Submissions

At least **14 days** prior to the hearing date stated in the Notice of Hearing, the City must provide the Committee with one copy of the Record which should contain the decision under appeal together with all of the information that was in front of and relied upon by the City representative who made the licensing decision under appeal.

At least **7 days** prior to the hearing stated in the Notice of Hearing, all parties, including interested parties, wishing to speak or introduce evidence must email or submit to the Committee one copy of argument, evidence, and substance of testimony to be given at the hearing.

The Appellant's submission should state the decision which the Appellant is asking the Committee to make and may also include:

- a. an acknowledgement of any agreed upon facts;
- b. written arguments covering legal points and authorities;
- c. any document or exhibit; and
- d. any preliminary matters that they intend to raise, including any questions of

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jurisdiction.

The Committee will ensure that a copy of the submitted materials is sent or available to the other parties prior to the hearing.

Copies will not be provided to interested parties, unless a request has been made.

IV. Hearing “de novo”

A licencing appeal before the Committee is a hearing de novo. “De novo” is a Latin term which means anew or starting again.

Both the appellant and the respondent may provide new information to supplement the material that was available to the individual that initially made the licencing decision (the Record) by calling additional parties or participants or any other additional evidence that may be relevant to the case.

V. Hearing Procedure

At the commencement of the Hearing, the Chair will:

- a. introduce the Committee and identify all persons present;
- b. deal with public access and observers;
- c. identify the matter under appeal;
- d. describe the hearing process which may include:
 - i. the order of presentation
 - ii. recesses and breaks
 - iii. legislative authority
 - iv. the decision
- e. deal with any preliminary matters.

VI. Withdrawal and Cancellation

If the Appellant withdraws the appeal (in writing or in person), then the Committee will cancel the appeal.

VII. Parties

The parties to a licencing hearing usually are:

- a. the appellant;
- b. the respondent, City of Edmonton

Hearings are open to the public and others such as observers, interested parties, interpreters, or participants may attend.

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Depending on the circumstances of any individual appeal, there may be other parties that are involved in an appeal.

VIII. Order of Presentation

Matters of procedure are decided by the Committee and guided by the interest of fairness. In the usual course, the hearing proceeds in the following order:

- a. Presentation by the appellant followed by questions to the appellant by Committee members;
- b. Presentations by interested parties in favour of the appellant's position followed by questions to interested parties in favour of appellant by Committee members;
- c. Presentation by the respondent followed by questions to the respondent by Committee members;
- d. Presentations by interested parties in favour of the respondent's position followed by questions to interested parties in favour of respondent by Committee members;
- e. Reply by the appellant who is given the last opportunity to speak to information raised during the hearing, followed by questions to the appellant/applicant by Committee members.

SECTION 6 - POSTPONEMENTS/ADJOURNMENTS

I. Requests

Requests for postponements may be made by any party at any time after the service of a Notice of Hearing. Requests for adjournments may be made at any time after the commencement of the Committee Hearing

Parties that are unavailable for a scheduled hearing, may make arrangements to appoint an agent to deal with the hearing, to request a postponement, or to prepare a written submission concerning the request and submit it for consideration to the Committee.

II. Factors to Consider

Postponement and adjournment requests may be granted or denied depending upon the circumstances.

Each case will be guided by the interests of fairness and the presented evidence and submissions. The Committee may consider several factors, including but not limited to:

- a) Previous postponement/adjournment requests;
- b) The seriousness of the issues to be decided;
- c) The cooperativeness of the parties;
- d) Agreement amongst the parties to the postponement/adjournment;
- e) The number of interested parties;
- f) The timeliness of the application;
- g) The impacts and risks associated with delay such as whether the appellant still retains the Licence under dispute or whether the condition of a property represents a danger or an eyesore;
- h) Safety and the public interest in general;
- i) Prejudice to the parties or any other effect a postponement may have on the enforcement of an Order;
- j) Prejudice, harm or any other effect a postponement may have on other interested parties or the public interest; or,
- k) The availability of an alternate remedy such as exclusion of evidence.

III. Procedure

When a request for postponement is received at least 14 days prior to the scheduled date for the Hearing and the party seeks a prehearing decision, the Committee will endeavour to schedule a meeting prior to the original scheduled

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merit hearing date, unless parties agree to another date and subject to requirements for reasonable notice and quorum.

If a request for postponement is received less than 14 days prior to the date scheduled for the merit hearing, the postponement request will be reviewed on the same day as the hearing on the merits of the appeal as a preliminary matter, unless parties agree to another date and subject to the requirement for quorum.

The appellant and respondent will each be given an opportunity to speak to the request for postponement.

The Committee may also hear from interested parties regarding the request for postponement.

If a party submits material in support of a postponement without making a personal appearance, the Committee may consider the material, and either grant or deny the postponement.

If the postponement is denied and the merit hearing is scheduled to begin on the same day, the hearing on the merits of the appeal will proceed whether or not the party requesting the adjournment is present.

SECTION 7 - INTERIM STAYS OF PROCEEDING

Section 11 of the *CSLAC Bylaw* regulates interim stays pending the completion of appeals and reviews:

Section 11

- (1) Upon acceptance of a notice of appeal, an interim stay on the licensing decision or order under appeal will automatically be granted until a final decision on the appeal is issued by CSLAC.
- (2) Notwithstanding subsection (1), an interim stay granted pursuant to this bylaw may be revoked by CSLAC on application by a party to the appeal if CSLAC is satisfied that:
 - (a) there has been a material change in circumstances that warrants revoking the interim stay;
 - (b) the conduct of the appellant warrants revoking the stay; or
 - (c) the operation of the interim stay creates or contributes to a situation of imminent danger to public safety.

An application to revoke an interim stay will be determined as a preliminary issue. In making a decision about revoking an interim stay, the Committee may consider various relevant factors including:

- a) The effects and potential for irreparable harm due to the affirmation or revocation of the interim stay;
- b) The effect of the interim stay on the surrounding community, including any financial impact, on surrounding businesses;
- c) Whether there has been any attempt to delay the proceedings or otherwise subvert the proceedings;
- d) Whether there are any significant public safety issues associated with the interim stay;
- e) Whether a situation is materially degrading or improving since the interim stay was put into place; or,
- f) Any other factors relevant to the effect of the interim stay on public safety.

The revocation of the interim stay takes effect immediately upon the Committee voting. However, the Committee will issue a formal written decision with reasons as soon as practicable after the vote.

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SECTION 8 – SERVICE AND FILING

A. SERVICE OF DOCUMENTS

Section 9 of the CSLAC *Bylaw* deals with the Committee's address for service. It states that notices of appeal and legal documents may be served on the Committee at the address listed on its website.

A notice or other document required to be filed with the City is deemed to be properly filed if it is received by the Community Standards and Licence Appeal Committee by the times specified in this Guide at:

Address: **Main Floor Churchill Building**

10019 – 103rd Avenue NW

Edmonton, Alberta, T5J 0G9

Phone: Ph. (780) 496-6079

Fax: (780) 401-7054

Email: cslac@edmonton.ca

A notice or other document required to be served by the Committee on any person is deemed to be properly served if it is couriered, mailed or emailed to the address provided by the person.

The following rules apply 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
- b) If filing or service is affected by mail, filing or service will be presumed to have been affected seven days from the date of mailing unless another date is proven.
- c) If filing or service is affected by email, the date the email is sent will be presumed to be the date it is received unless a party can prove there was a reason it could not have been received on that date (for example a server problem).

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SECTION 9 – COMMITTEE DECISION AND APPEAL

A. COMMITTEE DECISIONS

A Committee Decision will be pronounced orally in public by the Chair upon conclusion of the hearing; or, if further time is required for private deliberation, the Chair may pronounce the Committee Decision orally in public at a later date.

Committee members vote on the decision in public.

The decision of the majority of the Members sitting on the Committee is the Committee Decision.

Reasons for the Committee Decision need not be provided orally at the time of pronouncement. As soon as practicable, following the issuance of an oral decision, the Committee must provide the parties with a written confirmation of the Committee Decision along with the findings of fact on which it based its decision; and the reasons or explanation of why they made the Committee Decision. The Committee strives to release written decisions within 14 days of the oral decision.

A copy of the formal written Committee Decision including the findings of fact and supporting reasons may be picked up, mailed, or emailed to a party. Parties should ensure that the CSLAC Administration knows how the party would like to receive the decision.

B. APPEALS OF COMMITTEE DECISIONS

The formal written Committee Decision is final and binding and may not be further appealed or reviewed except as provided by the MGA or other legislation,