

CITY OF HAMILTON

BY-LAW NO. 07-170

BEING A BY-LAW TO LICENSE AND REGULATE VARIOUS BUSINESSES

CONSOLIDATION

This By-law is a consolidated version and includes amendments made by those amending by-laws listed on the following page. This consolidation is prepared for purposes of convenience only and is not the official or legal version of the By-law. For accurate reference to the By-law, certified copies should be obtained through the City Clerk's Office.

CITY OF HAMILTON
CONSOLIDATED BY-LAW NO. 07-170

Incorporating amendments made by:

By-Law No: Effective Date:

08-099	April 23, 2008	Amendment to Schedule 25, paragraph 64
08-131	May 28, 2008	Housekeeping and technical amendments General Provisions Schedule 1 Schedule 3 Schedule 9 Schedule 17 Schedule 19 Schedule 20 Schedule 21 Schedule 23 Schedule 25 Schedule 30 Schedule 31
08-175	July 10, 2008	Replacement of Appendix 1 of Schedule 25 (Taxi Cabs)
08-186	August 7, 2008	City of Hamilton Licensing Committee name change to Hamilton Licensing Tribunal
08-225	September 24, 2008	Deletion of Schedule 15 (Public Baths)
08-255	October 29, 2008	Amendment to definition of Lodging House
08-267	November 12, 2008	Replacement of Schedule 1 (Adult Entertainment Establishments) and Replacement of Schedule 13 (Personal Aesthetic Services)
08-285	December 10, 2008	Amendment to Schedule 25, paragraph 64
09-024	January 28, 2009	Amendment to Schedule 25, subsection 20
09-026	February 11, 2009	Amendment to Schedule 25, subsection 20
09-039	February 25, 2009	Amendments to General Provisions, section 4; Schedule 13, section 3; and Schedule 25 subsection 20
09-040	February 25, 2009	Amendment to General Provisions, section 5
09-058	April 1, 2009	Replacement of Appendix 3 of Schedule 25

<i>By-Law No:</i>	<i>Effective Date:</i>	
09-111	May 27, 2009	Amendments to General Provisions, section 11, paragraph 12, section 31, section 32; addition of Schedule 21.1 Hess Village Entertainment District; and repeal of By-Law 06-234
09-152	July 9, 2009	Replacement of Schedule 20 (Residential Care Facilities)
09-156	July 9, 2009	Housekeeping and technical amendments General Provisions Schedule 3 Schedule 10 Schedule 12 Schedule 18 Schedule 19 Schedule 29
09-170	August 13, 2009	Re-enactment of Schedule 20 (Residential Care Facilities)
09-237	November 11, 2009	Amendment to Schedule 25, paragraph 64
10-077	April 14, 2010	Housekeeping and technical amendments General Provisions Schedule 1 Schedule 4 Schedule 25
10-078	April 14, 2010	Replacement of Schedule 20 (Residential Care Facilities)
10-106	May 12, 2010	Amending to Schedule 29, provide for licensing of Sprinkler and Fire Protection Installers
10-126	May 26, 2010	Replacement of Appendix 3 of Schedule 25
10-198	August 12, 2010	Replacement of Schedule 26 (Mobile Sign Leasing or Renting)
10-314	December 15, 2010	Replacement of Schedule 21 (Food Premises) and deletion of Schedule 21.1
11-017	January 12, 2011	Addition of Schedule 15 (Personal Wellness Services Establishments)

<i>By-Law No:</i>	<i>Effective Date:</i>	
11-111	April 13, 2011	Housekeeping and technical amendments General Provisions Schedule 1 Schedule 4 Schedule 12 Schedule 14 Schedule 16 Schedule 22 Schedule 23 Schedule 25 Schedule 26 By-law 10-221
11-125	May 11, 2011	Housekeeping and technical amendments to Schedule 25 with respect to the Priority List
11-142	May 25, 2011	Replacement of Schedule 1 (Adult Entertainment Establishments)
11-230	September 28, 2011	Housekeeping and technical amendments General Provisions Schedule 25 By-law 10-142 By-law 10-118 By-law 10-197 By-law 10-260
12-021	January 25, 2012	Replacement of Schedule 22 (Salvage and Second-Hand Goods, Pawnbroker, and Jewellery and Precious Metals Businesses), Deletion of Schedules 6, 11, and 14
12-069	March 28, 2012	Replacement of Schedule 3 (Bed and Breakfasts, Hotels and Motels)
12-101	April 25, 2012	Amendments to the General Provisions to have the Licensing Tribunal make the final decision to refuse, suspend, revoke or attach conditions to a licence instead of Council.
12-118	May 25, 2012	Addition of New Schedule 28 (Tow Trucks)
12-150	June 27, 2012	Deletion of Schedule 19 (Refreshment Vehicles) and addition of Schedule 6 (Food Service Vehicles)
12-219	October 10, 2012	Amendments to Schedule 20 (Residential Care Facilities)

<i>By-Law No:</i>	<i>Effective Date:</i>	
12-249	November 14, 2012	Amendments to Schedule 25 (Taxicabs) to have accessible taxicab owner licenses issued in 2013 and 2014
12-250	November 14, 2012	Amends Schedule 22 (Salvage and Second-Hand Goods, Pawnbroker, and Jewellery and Precious Metals Businesses), Section 5
13-060	February 27, 2013	Amends Schedule 25 (Taxicabs), Sections 55 – 59
13-081	March 27, 2013	Amends Schedule 28 (Tow Trucks)
13-302	December 11, 2013	Amends Schedule 25 (Taxicabs), Appendix 1, Tariff/Fares
14-119	May 14, 2014	Amends Schedule 6 (Food Service Vehicles)
14-181	July 11, 2014	Amends Schedule 25 (Taxicabs)
15-130	May 13, 2015	Amends Schedule 21 (Food Premises)
15-232	October 14, 2015	Amends Schedule 3 (Bed and Breakfasts, Hotels and Motels)
16-053	February 24, 2016	Addition of Schedule 11 (Payday Loan Businesses)
16-105	April 13, 2016	Amends General Provisions by deleting the following Licensing Categories: Building Exterior Cleaners (Schedule 5) Mobile Home s and Mobile Home Parks (Schedule 10) Sign Posters and Bill Distributors, Etc. (Schedule 24)
17-011	January 25, 2017	Amends General Provisions
17-012	January 25, 2017	Amends Schedule 25 – Taxicabs
17-013	January 25, 2017	Provides for the addition of Schedule 24 to Licence Personal Transportation Providers
17.054	March 29, 2017	Delete and replace Schedule 22 – Auctioneers
17-055	March 29, 2017	Delete Schedule 18 – Recreational Camping Establishments
17-056	March 29, 2017	Delete and replace Schedule 27 – Tobacco Retailers
17-069	April 26, 2017	Delete and replace Schedule 7 – Kennels and Pet Shops
17-116	June 14, 2017	Delete and replace Schedule 6 – Food Service Vehicles

<i>By-Law No:</i>	<i>Effective Date:</i>	
17-128	June 28, 2017	Delete and replace Schedule 22 Second-Hand Goods, Jewellery and Precious Metals (remove Salvage Businesses and Pawnbrokers)
17-129	June 28, 2017	Add Schedule 5 – Pawnbrokers
17-130	June 28, 2017	Add Schedule 10 – Salvage Businesses
17-216	October 25, 2017	Amends Schedule 21 - Food Premises (Hess Village)
17-251	November 22, 2017	Amends Schedule 8 -Limousines
17-259	December 8, 2017	Amends Schedule 25 - Taxicabs
18-040	February 28, 2018	Amends Schedule 25 - Taxicabs (Accessible Taxi Plates)
18-041	February 28, 2018	Amends Schedule 25 – Taxicabs (Replace Appendix 1 (Taxicab Tariff/Fares Meter and By Agreement Rates)
18-042	February 28, 2018	Delete and Replace Schedule 11 (Payday Loan Businesses)
18-111	May 9, 2018	Delete and Replace Schedule 21 (Hess Village Paid Duty Policing)
18-212	August 17, 2018	Amend Schedule 1 (Adult Entertainment Establishments)
18-252	September 12, 2018	Amend Schedule 24 (Personal Transportation Provider) and Schedule 25 (Taxi Cabs)
18-320	December 19, 2018	Delete and Replace Schedule 21 (to include Drive-Thru Facilities)
19-175	July 12, 2019	Add Schedule 14 – Tree Cutting Services
19-258	October 23, 2019	Add 90 Centennial Parkway North as (ee) to Schedule 11

CITY OF HAMILTON
CONSOLIDATED BY-LAW NO. 07-170

A By-law to License and Regulate Various Businesses

WHEREAS Council considers it in the public interest to enact a by-law to license regulate and govern various classes of businesses, and to repeal the existing City of Hamilton Licensing Code being City of Hamilton By-law No. 06-213, as amended;

AND WHEREAS Part IV of the Municipal Act, 2001 allows the enactment of by-laws to license, regulate and govern businesses, and to impose conditions on the obtaining, holding and keeping of licences to carry on such businesses;

AND WHEREAS Council wishes to exercise its powers over businesses, the persons carrying on or involved in the operation of the businesses including the powers to impose conditions on the obtaining, holding or renewing of licences and for the suspension, denial and revocation of licences as this By-law and Municipal Act, 2001 provide;

AND WHEREAS the regulation of the businesses in this by-law, the requirement for a licence and the imposition of such conditions will aid in the application and enforcement of this by-law and other laws so as to assist in allowing, amongst other things, for the identification and qualification of the persons responsible for the operation of the business, the identification of the location of businesses, the regulation and inspection of equipment, vehicles, premises and other property used to carry on business, and allowing for the protection of persons dealing with or affected by such businesses and persons;

AND WHEREAS Sections 390 to 400 of the Municipal Act authorize a municipality to pass by-laws imposing fees or charges for services or activities provided or done by them;

AND WHEREAS pursuant to Section 151(1)(g) of the Municipal Act, Council considers it desirable to provide for a system of administrative penalties and fees as an additional means of encouraging compliance with this By-law;

AND WHEREAS Council is satisfied that a public meeting and reasonable public notice have been given for enactment of this by-law in accordance with the Municipal Act, 2001;

NOW THEREFORE the Council of the City of Hamilton enacts as follows:

GENERAL PROVISIONS

DEFINITIONS and APPLICATION

1.(1) In this By-law:

- (a) "**applicant**" means a person applying for a licence or renewal of a licence thereof under this By-law;
- (b) "**business**" has the same meaning as provided in section 150 of the *Municipal Act, 2001*, S.O. 2001, Chapter 25, as amended;
- (c) "**City**" means the City of Hamilton as constituted by section 2 of the *City of Hamilton Act, 1999*, S.O. 1990, c.14, Schedule C;
- (d) "**City Council**" or "**Council**" means the council of the City of Hamilton;
- (e) "**City Treasurer**" means the treasurer of the City;
- (f) "**conditions**" includes special conditions which are conditions imposed upon a business in a class that have not been imposed on all of the businesses in that class, as a requirement of obtaining, continuing to hold or renewing a licence;
- (g) "**Director of Licensing**" means the Director of Licensing in Parking and By-law Services of the Planning and Economic Development Department, or his or her designate;⁽¹⁷⁻⁰¹¹⁾
- (h) "**hearing**" includes a hearing or an opportunity given for a hearing, where an applicant or licensee may show cause why the licence should be granted, or not refused, revoked or suspended, with or without conditions;
- (i) "**Licensing Tribunal**" means the Hamilton Licensing Tribunal established under subsection 3(1);

- (j) "**Municipal Officer**" except where otherwise indicated, means an employee of the Parking and By-law Services Division of the Planning and Economic Development Department who is assigned by the Director of Licensing to enforce the provisions of this By-law;⁽¹⁷⁻⁰¹¹⁾
 - (k) "**person**" includes an individual, partnership, corporation, and the heirs, executors, administrators or other legal representatives of a person to whom the context can apply according to law;
 - (l) "**policies**" or "**policy**" means policies or a policy approved by Council under section 15;
 - (m) "**private club**" means an establishment which is maintained and operated by a not-for-profit corporation or unincorporated association solely for the benefit and enjoyment of its members, and which has adopted by-laws or policies regulating the admission of persons to the corporation or association, the classes and conditions of membership, the suspension and termination of membership, the qualification and membership of directors and their manner of election, and the holding of an annual general meeting of members, and which requires the payment of fees and dues by members on an annual basis, and which issues cards or other documents to members which state the name of the member and the date on which his or her membership expires;
 - (n) "**Secretary**" means the secretary of the Licensing Tribunal; and
 - (o) "**Schedule**" shall be a reference to one or all the Schedules listed in section 30, as the context requires.
- (2) Except where otherwise provided, the provisions of this By-law apply to the engaging in or carrying on, in the City of Hamilton, of any of the businesses regulated by this By-law.
- (3) This By-law is subject to the *Retail Business Holidays Act*, R.S.O. 1990, c. R.30.

ADMINISTRATION

2. Subject to the terms of this or other by-laws, or the directions of Council:
 - (a) Administration of this By-law shall be by the staff of Licencing and By-law Services Division of the Planning and Economic Development Department of the City. ⁽¹⁹⁻¹⁷⁵⁾
 - (b) Enforcement of this By-law shall be by:
 - (i) persons assigned by the Director of Licensing or Council for the purpose of enforcing the provisions of this By-law which shall include the following:
 - a. municipal law enforcement officers; and
 - b. inspectors appointed pursuant to the *Building Code Act, 1992*, S.O. 1992, c.23; and
 - (ii) police officers.
- 3.(1) A tribunal, composed of not fewer than three members of Council who are appointed by resolution of Council, is established pursuant to section 23.2 of the Municipal Act, 2001, under the name "Hamilton Licensing Tribunal".
- (2) The Licensing Tribunal shall select one of its members as a Chair.
- (3) For the purposes of subsection (2), the Licensing Tribunal shall apply the by-laws of the Council and have the powers, duties and rights as applicable under the Statutory Powers Procedure Act, R.S.O. 1990, c. S. 22.
- (4) There shall be a Secretary to the Licensing Tribunal, who may be assigned administrative duties by the Tribunal.

- (5) The Secretary shall attend all meetings of the Licensing Tribunal and shall keep all necessary records and perform such other duties as may from time to time be required by the Licensing Tribunal.

4.(1) The duties of the Director of Licensing include ensuring:

- (a) that the applicant, except an applicant for a licence as an attendant under Schedules 1 or 4 or as a driver under Schedule 25, is the owner or operator of the business and "owner" or "operator", unless otherwise defined in the applicable Schedule, means a person who has responsibility for carrying out the business including but not limited to:
- (i) having the right to possess or occupy the premises where the business is carried on;
 - (ii) having significant financial responsibility for the business such as responsibility for accounts payable and accounts receivable;
 - (iii) managing any employees of the business such as hiring or firing such employees;
 - (iv) having responsibility for the business under a permission granted by the federal or provincial governments such as a liquor licence (Liquor Licence Act) or a vendor's permit (Retail Sales Tax Act).
- (b) that applications are on the form applicable to the category of licence applied for, complete, and signed by the applicant, or where the application is from a partnership or corporation respectively, signed by a partner or the president or other authorized signing officer of the corporation;
- (c) that the applicant has paid the fees required for the applicable licence(s) and application, for the term of the licence, prior to processing the application; and
- (d) where a limited number of licences may be issued or transferred, that there is a licence approved or available for issuance or transfer.

- (2) Where an application or applicant fails to comply with the requirements of paragraphs 1(a), (b) or (c), or the Director of Licensing' instructions in that regard, or where no licences are available to be issued or transferred under paragraph 1(d), the application shall not be processed and shall be returned to the applicant.
- (3) Where the application is returned under subsection (2), the applicant may be:
 - (i) given the application and advised personally; or
 - (ii) sent the application by regular mail to the applicant's address as disclosed by the application or to their last known address and advised by an accompanying letter.
- (4) When the Director of Licensing has refused to issue a licence under section 12 and the applicant has not requested a hearing in accordance with subsection 13(1), no further application from the applicant for the same category of licence shall be processed by the Director of Licensing for one year from the date of the refusal. Any such further application shall be returned to the applicant in accordance with subsection (3).
- (5) Notwithstanding subsection (4), where the only reason for the refusal is the failure of premises to meet one or more requirements under this By-law, a further application may be processed if the premises, whether they are the same or different premises, meet all requirements under this By-law. Any such further application is subject to all of the requirements under this By-law including the requirements under this section.
- (6)(a)

Notwithstanding any of the provisions of this By-law that apply to an applicant for a licence that is:

 - (i) a partnership, the Director of Licensing may issue a licence to a partnership provided that at least one partner, or other individual affiliated with the partnership as determined by the Director of Licensing, satisfies such applicable provisions;

- (ii) a corporation, the Director of Licensing may issue a licence to a corporation proved that at least one director, officer, or other individual affiliated with the corporation as determined by the Director of Licensing, satisfies such applicable provisions.

- (b) Paragraph (a) does not apply to Schedules 1, 4 or 25.

LICENCE APPLICATIONS AND FEES

- 5.(1) An applicant for a licence shall file the application, materials and fees, and in the case of a licensee renewing a licence, shall file the certifications, materials and fees, required to be supplied under the terms of this By-law.
- (2) The applicant shall be responsible for ensuring that:
 - (a) all forms are properly completed and signed where necessary;
 - (b) truthful information is provided in forms required, or in responses supplied to enquiries made under this By-law;
 - (c) prior to issuance of the licence, any correction of information supplied under paragraph (a) or (b) is brought to the attention of the Director of Licensing in writing; and
 - (d) all necessary and required information, materials and fees are delivered to the Director of Licensing, including unpaid fines for Fees for Service or unpaid fines imposed under the Provincial Offences Act;⁽¹⁷⁻⁰¹¹⁾
- (3) An applicant may withdraw the application prior to issuance of the licence.
- (4) A person issued more than one licence under this By-law for the same premises at the same time shall only be required to pay the fee for the licence with the highest fee.
- (5) A person holding a current and valid licence under this By-law who is issued a further licence for the same premises shall only be required to pay the administration portion of the fee plus any inspection fee for the further licence.

(6) Notwithstanding subsections (4) and (5), a person issued a *Payday Loan Business Licence under Schedule 11*(16-053) or a Tobacco and Electronic Cigarette Retailer ⁽¹⁷⁻⁰⁵⁶⁾ licence under Schedule 27 of this By-law shall be required, under all circumstances, to pay the fee for that licence.

6.(1) The applicant shall make a written application for a licence, and shall include in or with the application:

(a) the particular class or classes of licence applied for;

(b) the full name, home address and telephone number of the applicant;

(c) any other information as may be required for the kind and class of licence by the Schedules, or as may be required by the Director of Licensing to identify the applicant, the business and its owner or operator, and the nature of the business which the applicant proposes to license, including any premises or vehicle, cycle or cart to be used;

(d) where the application is for renewal of a licence, the applicant shall either supply completed and executed certifications on the form provided to the effect that there is no change to the information as supplied in the previous application and previous records of conviction required under this By-law, or shall provide either a new application or a written and signed list of the changes in the required information from the previous application, as may be requested by the Director of Licensing; and

(e) applicants shall supply with the application, the following information:

(i) an applicant for a licence under

Schedule 1	Adult Entertainment Establishments
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Schedule 2	Auctioneers
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Schedule 3	Bed and Breakfasts, Hotels and Motels
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Schedule 4	Body Rub Parlours
Schedule 5	Pawnbrokers ⁽¹⁷⁻¹²⁹⁾
Schedule 6	Food Service Vehicles
Schedule 9	Lodging Houses
Schedule 10	Salvage Businesses ⁽¹⁷⁻¹³⁰⁾
Schedule 11	Payday Loan Businesses ⁽¹⁶⁻⁰⁵³⁾
Schedule 12	Pedlars
Schedule 14	Tree Cutting Services ⁽¹⁹⁻¹⁷⁵⁾
Schedule 16	Public Garages - Classes A, B1, B2 and B3 only
Schedule 20	Residential Care Facilities
Schedule 22	Second-Hand Goods, Jewellery and Precious Metals Businesses ⁽¹⁷⁻¹²⁸⁾
Schedule 24	Personal Transportation Provider ⁽¹⁷⁻⁰¹³⁾
Schedule 25	Taxicabs - Cab Broker only
Schedule 29	Trades
Schedule 30	Transient Traders

shall submit, as part of their application for a licence:

- a. the applicant's original criminal record, provided that if no original criminal record exists, the applicant shall submit instead original certification from the police that no such record exists;
and

- b. a list of any criminal or provincial offences in all jurisdictions for which the applicant has been convicted and not pardoned and which do not appear on any original criminal record submitted.

(ii) an applicant for a licence under

Schedule 8	Limousines
Schedule 25	Taxicabs - Taxicab Driver and Taxicab Owner only
Schedule 28	Tow Trucks

shall submit, as part of their application for a licence:

- a. the applicant's original criminal and driving records provided that if no original criminal record exists, the applicant shall submit instead original certification from the police that no such record exists; and
- b. a list of any criminal, provincial or driving offences in all jurisdictions for which the applicant has been convicted and not pardoned and which do not appear on any original criminal or driving record submitted.

(iii) a licensee under

Schedule 8	Limousines
Schedule 25	Taxicabs - Taxicab Driver and Taxicab Owner only

shall submit, as part of their application to renew a licence:

- a. the applicant's original driving record; and

- b. a list of any driving offences in all jurisdictions for which the applicant has been convicted and not pardoned and which do not appear on any original driving record submitted.
 - (iv) a licensee seeking to renew a licence for the classes set out in subparagraph (i) or (ii) above, where a change of information has been noted in the criminal, provincial or driving record as applicable, shall upon request of the Director of Licensing submit the records and information required by subparagraph (i) or (ii) as applicable, with the application for renewal.
- (2) The application and required materials shall be delivered in person by the applicant to the Director of Licensing, together with the applicable fees.
 - (3) Where the applicant for a licence application is a partnership, the application shall include the names and addresses of all partners, and each partner shall supply the information required under subparagraphs (1)(e)(i) and (ii).
 - (4) Where the applicant for a licence is a corporation, the application shall include the names and addresses for all directors and officers, and each director and officer of the corporation shall supply the information required under subparagraphs 1(e)(i) and (ii).
 - (5) A criminal record, driving record or other document referred to in subparagraphs 1(e)(i) or (ii) shall be dated not more than 36 days prior to the date on which the application is filed with the Director of Licensing.
 - (6)
 - (a) Every person who is a licence holder under this By-law shall ensure that they renew the licence before it expires.
 - (b) In the event a licence holder fails to renew their licence before it expires, they may renew their licence no more than 60 days after it expires provided that they pay, in addition to the applicable licence fee, the applicable late payment fee.
 - (c) No licence shall be renewed more than 60 days after it expires.

- (7) Where any premises or part thereof are to be used for a purpose requiring authorization by licence, the applicant shall ensure the application includes an accurate and complete description of such premises or of the part to be authorized to be so used, including the address and telephone number of the location, and shall make a separate application for each separate premises to be licensed.
 - (8) Where a motor vehicle is to be used for a purpose requiring authorization by licence, the applicant shall ensure the application includes a sufficient description of such vehicle, including the make, the model, the licence plate number, and the vehicle identification number, and shall make a separate application for each vehicle to be licensed.
- 7.(1) In this section, "licence" means a licence for a business of the following classes, which is not a renewal or transfer of a current and valid licence under this By-law: a flea market under Schedule 6, a lodging house under Schedule 9, any class of garage under Schedule 16, a public hall, bingo parlour, roller skating rink, billiard parlour or pool room under Schedule 17, a residential care facility under Schedule 20, or an eating establishment under Schedule 21.
- (2) Every person seeking a licence for the proposed business, shall submit a plot plan in a form satisfactory to the Director of Licensing, together with the fees and documents required for a zoning verification certificate, and submit the zoning verification certificate obtained as part of the application.
- 8.(1) The applicable licence fee for each class or type of licence shall be the fee prescribed for each Schedule in the User Fees and Charges By-law for such type or class of licence or application, and shall be considered an annual fee unless this By-law specifies otherwise.
- (2) Subject to subsection (4), applicants and licensees shall pay the fees prescribed for the application and licence applied for, and their licence when issued shall expire one year later, on the anniversary of the date of issuance, unless the applicable Schedule or this By-law provides for a shorter term.

- (3) Where a licence is renewed, before, on or after its date of expiry, the date of issuance as shown on the renewed licence shall be the date of expiry of the expired licence.
- (4) Where a licence has been issued or renewed subject to the fulfillment of a condition imposed by the Director of Licensing or the Licensing Tribunal, and the applicant or licensee has failed to fulfil such condition within the time specified, the applicant or licensee shall pay an additional fee of \$100.00 before the licence may be continued.
- (5) In spite of the expiry date determined under subsection (2), a licence shall expire:
 - (a) when the licence is revoked or suspended under this By-law;
 - (b) where the licensee ceases to be the owner or operator as defined in paragraph 4(1)(a);
 - (c) where the licence is issued to an individual, on the date of death of the individual, provided that a taxicab owner's licence issued under Schedule 25 shall expire in accordance with section 47 of that Schedule;
 - (d) where the licence is issued to a partnership or corporation, on the date of dissolution of the partnership or corporation;
 - (e) where any federal, provincial or municipal licence, including a permit, an approval, a registration or any other type of permission, required for the licensee to carry on or engage in their business has been revoked, suspended or has expired without renewal; or
 - (f) where the licensee has been prohibited from carrying on or engaging in their business under federal, provincial or municipal authority including under authority of a court order.
- (6) Refunds of paid licence fees may be made, in the following amounts and circumstances:

- (a) Where the applicant prior to processing the licence under section 11 withdraws an application for a licence, a refund of the licence fee may be made to the applicant;
 - (b) Subject to paragraph (e), where an application for a licence is withdrawn by the applicant after processing the licence under section 11 and before issuance, a refund of the licence fee may be made to the applicant;
 - (c) Subject to paragraph (e), where a licence or renewal of a licence is refused or denied, a refund of the licence fee may be made to the applicant;
 - (d) Where a licence is revoked, a refund may be made of the proportionate amount of the unexpired portion of the term of the licence; and
 - (e) In the case of an application for a licence other than a renewal, the processing fee as set out in the User Fees and Charges By-law is non-refundable, in the event the application is withdrawn or the licence is not issued, and for the sake of clarity in this subsection, "renewal" means renewal by the current licensee of the previous year's licence without change.
- (7) The licensee, or the licensee's legal representative where the licensee has died, shall return the licence certificate, plate, sticker or photo identification to the Director of Licensing:
- (a) where a licence that has expired under paragraph (5)(a), unless the licence certificate has been returned to the City at the earlier request of the Director of Licensing, within seven days of the date of approval of the suspension or revocation by Council;
 - (b) where a licence that has expired without renewal under subsection (2) or expired under paragraphs (5)(b), (c), (d) or (e), within seven days of the date of the expiry; or

- (c) where the business licensed under this By-law ceases to operate, within seven days of the date it ceases to operate.
9. Fees shall be paid by the licensee for replacement of:
- (a) a licence certificate,
 - (b) photo identification, and
 - (c) a licence plate,
- in accordance with the User Fees and Charges By-law.
10. Where the City provides any form or other document to a person that requires the insertion of information, the form or document whether or not containing the inserted information in whole or in part, shall be and remain the property of the City.

ISSUANCE of LICENCES

- 11.(1) The Director of Licensing upon receipt of a proper, completed application and payment of fees for a licence under this By-law shall circulate the application to such City or provincial departments or agencies as the Director of Licensing deems necessary or as directed by Council, including but not limited to the Fire Department, Hamilton Police Services, the Planning and Economic Development Department, Public Health Services and the Public Works Department.
- (2) Departments or agencies to which the application is provided under subsection (1) shall review obtainable information and provide the Director of Licensing with comments or compliance reports on whether the information indicates non-compliance with an applicable law which the department or agency enforces and which applies to the proposed business, and where an inspection is made, shall provide the Director of Licensing with a report on any non-compliance found as a result of that inspection.

- (3) Where, under this By-law an applicant or licensee is to be tested, the City department responsible for the testing shall conduct the test or provide an opportunity for taking the test, and provide the Director of Licensing with the test results.
 - (4) Applicants and licensees, as a condition of obtaining or continuing to hold a licence, shall permit inspections or inquiries by representatives of the departments or agencies circulated under subsection (1) as may be reasonably requested, and shall undertake the tests referred to in subsection (3).
 - (5) Fees which are required to be paid for the making of an inspection or the conducting of a test under subsections (3) and (4) as prescribed in the User Fees and Charges By-law may be collected by the Director of Licensing before a licence is issued or renewed.
 - (6) The Director of Licensing may send notice of the comments or other response from the departments or agencies received under this section to the applicant or licensee.
- 12.(1) The Director of Licensing shall refuse to issue a licence or may recommend the suspension or revocation of a licence when:
- (a) in the case of a refusal:
 - (i) a policy under section 15 requires a refusal;
 - (ii) any federal, provincial or municipal licence, including a permit, an approval, a registration or any other type of permission, required for the applicant to carry on or engage in their business has not been issued or has been suspended, revoked or has expired; or
 - (iii) the applicant has been prohibited from carrying on or engaging in their business under federal, provincial or municipal authority including under authority of a court order;
 - (b) in the case of a recommendation:
 - (i) the licensee has not actively carried on the business for which the licence was obtained within a reasonable period of time following the issuance or renewal of the licence; or

- (ii) a policy under section 15 becomes applicable and would require a refusal or the issuance of a conditional licence if the licensee were applying for a licence; or
 - (c) in the case of refusal or a recommendation, the applicant or the licensee:
 - (i) has not met any of the requirements under this By-law including the applicable Schedule or any conditions on the licence;
 - (ii) has provided information in an application or by other means that is false or misleading;
 - (iii) has not paid any fee to be paid under this By-law including the applicable Schedule;
 - (iv) has not paid any fine or court awarded costs resulting from a legal proceeding related to this By-law or the applicable Schedule;
 - (v) has not complied with any prohibition or other court order resulting from any legal proceeding related to this By-law or the applicable Schedule; or
 - (vi) in the opinion of the Director of Licensing:
 - 1. the operation of the applicant's or licensee's business would put the public safety at risk;
 - 2. the operation of the applicant's or licensee's business is not or will not be carried on in compliance with the law; or
 - 3. the conduct of the applicant or licensee (in the case of partnership, the conduct of its partners, employees or agents or in the case of a corporation, the conduct of its officers, directors, employees or agents) affords reasonable grounds for belief that the applicant or licensee will not carry on or engage in the business in accordance with the law or with honesty or integrity.
- (2) The Director of Licensing may issue a licence:
- (a) upon conditions specified as required by a policy under section 15 when paragraphs 12(1)(a) and 12(1)(c) do not apply; or

- (b) when paragraphs 12(1)(a), 12(1)(c) and 12(2)(a) do not apply.
- 13.(1)(a) When the Director of Licensing refuses to issue a licence, the Director of Licensing shall send a dated notice of refusal to the applicant and the Secretary which includes the grounds upon which the licence is being refused.
- (b) An applicant who receives a notice of refusal is entitled to request a hearing before the Licensing Tribunal.
 - (c) A request by an applicant for a hearing shall be made in writing, accompanied by the applicable fee and delivered to the Secretary within 30 days of the date contained in the notice of refusal. The applicant shall also include the grounds for their request.
- (2)(a) When the Director of Licensing has recommended the suspension or revocation of a licence, the Director of Licensing shall send a dated recommendation to suspend or revoke to the licensee and the Secretary which includes the grounds upon which the recommendation is being made.
- (b) A licensee who receives recommendation to suspend or revoke is entitled to a hearing before the Licensing Tribunal.
- 14.(1) Where a request for a hearing meeting the requirements of paragraph 13(1)(c) or a recommendation to suspend or revoke has been delivered to the Secretary under paragraph 13(2)(a), a hearing shall be scheduled before the Licensing Tribunal and notice of the hearing date shall be given to the parties.
- (2) The parties to a hearing to refuse a licence are the applicant and the City and to a hearing to suspend or revoke a licence are the licensee and the City.
- (3) A notice of hearing shall include:
- (a) a statement of the time, date and purpose of the hearing; and
 - (b) a statement that if the applicant or licence holder does not attend the hearing, the Licensing Tribunal may proceed in their absence without notice

to them.

(4) A notice of refusal or a notice of hearing may be delivered personally to a person apparently in charge of a licensed premises, vehicle, cart or cycle or by sending it by prepaid registered mail to the last known address of the applicant or licensee on file with the City. Delivery by registered mail shall be deemed to have taken place five business days after the date of mailing.

15.(1) The Director of Licensing shall use and apply the policies, where applicable, to the decision to deny or approve licences with or without conditions, or to recommend revocation or suspension of licences, which policies are attached as Appendices "A" and "B" to these General Provisions.

(2) Director of Licensing may, at a hearing, recommend that a licence be refused, suspended or revoked or the imposition of conditions.

16.(1) The Licensing Tribunal shall hold a hearing at the time, date and place set out in a notice of hearing.

(2) A hearing shall be commenced by the Licensing Tribunal on or before 60 days from the date of delivery of a notice of hearing subject to a decision of the Licensing Tribunal to extend the time for commencing a hearing.

17.(1) Upon holding an appeal from a refusal to issue a licence or a hearing to suspend or revoke a licence, the Licensing Tribunal may:

- (a) uphold the refusal to issue the licence;
- (b) suspend or revoke the licence; or
- (c) attach conditions to the licence.

(2) Conditions attached to a licence may include but are not limited to requiring the applicant or licensee:

- (a) comply with by-laws or other laws and provide proof of such compliance;

- (b) pay a fine or other court awarded costs resulting from a legal proceeding related to this By-law or the applicable Schedule and to provide proof of such payment;
- (c) comply with a prohibition or other court order resulting from a legal proceeding related to this By-law or the applicable Schedule and to provide proof of such compliance;
- (d) change the hours of operation of their business;
- (e) take or re-take a test required under this By-law;
- (f) supply additional information on criminal, provincial or driving convictions or periodic updates of such convictions or both;
- (g) supply information to verify evidence given at their hearing; or
- (h) ensure that the persons carrying on their business do so in accordance with the law or with honesty and integrity.

(3) The Licensing Tribunal shall have regard to the following matters where relevant, as may be raised at a hearing:

- (a) this By-law and other applicable law;
- (b) circumstances and facts raised by the evidence of the parties;
- (d) if the business puts or could put public safety at risk; and
- (e) if the business is or will be carried on in compliance with the law, and whether the conduct of the person (in the case of a partnership, the conduct of its partners, employees or agents or in the case of a corporation, the conduct of its officers, directors, employees or agents) affords reasonable grounds for belief that the person will not carry on or engage in the business in accordance with the law or with honesty or integrity.

(4) The Licensing Tribunal's decision in respect of refusing, suspending, revoking or attaching conditions to a licence is final.

18.(1) After the Licensing Tribunal has made a decision in respect of a hearing, notice of that decision shall be sent to the applicant or licensee by personal delivery or by registered mail to the last known address of the applicant or licensee on file with the City.

(2) Where the decision of the Licensing Tribunal is:

- (a) to issue a licence or conditional licence, the Director of Licensing shall issue the licence or the conditional licence, on the terms directed by the Licensing Tribunal; or
- (b) to refuse or revoke a licence, any further hearing with respect to that licence shall be not considered for one year from the date of the Licensing Tribunal's decision.

GENERAL and OFFENCES

19.(1) Every licence certificate shall be in such form as may from time to time be authorized by the Director of Licensing and shall show on its face:

- (a) the kind or class or classes of licence issued;
- (b) the date of expiry;
- (c) whenever the licence authorizes the use of any premises or part or parts thereof for the purpose of the licensed business, identification of such premises or part or parts; and
- (d) wherever the licence authorizes the use of a vehicle, cycle or cart, identification of the vehicle, cycle or cart.

(2) Licence certificates may show conditions imposed on the licence.

(3) No licence certificate shall be valid until it is shown on the face of the certificate that the amount of the licence fee has been paid.

- (4) The signature of the Director of Licensing shall be affixed to each issued licence certificate, and a mechanical reproduction of the signature may be affixed in place of the original.
 - (5) On behalf of the City Clerk, the Director of Licensing may sign a statement as to the licensing or non-licensing of any premises or person under this By-law as provided for under subsection 447.6(4) of the Municipal Act, 2001.
20. Every licence certificate, licence plate, identification card, form or document, shall be delivered forthwith to the City upon written or oral request of the Director of Licensing or a licence inspector acting upon his or her direction.
- 21.(1) Every licence is personal to the holder thereof, and no licence is transferable without the consent in writing of the Director of Licensing or Council.
- (2) No licence is transferable unless a transfer is specifically provided for in the applicable Schedule.
 - (3) No licence authorizes the use of any premises or part thereof, or of any vehicle, cycle or cart, except that identified on the licence certificate or record of application.
- 22.(1) Where a licence authorizes the use of any premises or part thereof, for any purpose for which a licence is required under this By-law, the current licensee shall:
- (a) post up the licence certificate; and
 - (b) keep the licence certificate posted up, in a position where it may readily be seen and read by persons entering the premises or part thereof.
 - (c) remove any licence certificate which is not current from any area which is accessible to persons entering the premises.

23. The licensee shall be responsible that the premises authorized to be used for the purposes of the licensed business are kept clean and orderly, and that every vehicle, cycle or cart authorized to be used for the purpose of the licensed business is so used only when in a clean and safe condition.
24. Persons carrying on or engaged in the businesses for which licensing is provided under this By-law, shall allow at any reasonable time, inspection of the places or premises used in the carrying on of the business and equipment, vehicles and other personal property used or kept for hire in connection with the carrying on of the business, by persons authorized to enforce the provisions of this By-law.
25. A licensee who is issued a licence on the condition that the Licensee provide further criminal or driving records, shall supply the information required by subparagraphs 6(1)(e)(i) and (ii) as applicable, on the intervals required by the conditions imposed on their licence.
- 25a Every licence holder shall advise the Director of Licensing immediately in writing of any change to the information required to be filed in respect of their licence under the General Provisions or the Schedule under which their licence is issued.
- 26.(1) Every person engaging in or carrying on any business for which a licence is required by the provisions of this By-law shall be responsible that all applicable law, including all the provisions of this By-law and the applicable Schedule or Schedules regulating such business, are complied with.
- (2) Licensees shall comply with all applicable law, including all the provisions of this By-law and the applicable Schedule or Schedules, and with conditions of their licences, and no licensee shall cause or permit their employee, agent or other persons carrying on or engaging in the business on their behalf, to fail to comply with all applicable law, including the provisions of this By-law and the applicable Schedule or Schedules, and with the conditions of their licences.

(3) Compliance with all applicable law, including the provisions of this By-law and its Schedules, and with the conditions of licences is a condition of an applicant or licensee obtaining, continuing to hold or renewing a licence.

26a. (1) A person assigned to enforce this By-law may enter on land at any reasonable time for the purpose of carrying out an inspection to determine whether or not the following are being complied with:

- (a) this By-Law;
- (b) a direction or order made under this By-Law;
- (c) a condition of a licence issued under this By-Law; or
- (d) an order made under s. 431 of the *Municipal Act, 2001*.

(2) A person assigned to enforce this By-law may, for the purposes of the inspection under subsection (1):

- (a) require the production for inspection of documents or things relevant to the inspection;
- (b) inspect and remove documents or things relevant to the inspection for the purpose of making copies or extracts;
- (c) require information in writing or otherwise as required by the person assigned to enforce this By-law from any person concerning a matter related to the inspection; or
- (d) alone or in conjunction with a person possessing special or expert knowledge, make examinations or take tests, samples or photographs necessary for the purposes of the inspection.

(2.1) Any cost incurred by the City in exercising its authority to inspect under subsection (2), including but not limited to the cost of any examination, tests, sampling or photographs necessary for the purposes of the inspection, shall be paid by the person who is licensed or required to be licensed under this By-law to carry on the business being inspected.

- (3) A person assigned to enforce this By-law may undertake an inspection pursuant to an order issued by a provincial judge or justice of the peace under section 438 of the *Municipal Act, 2001* where he or she has been prevented or is likely to be prevented from carrying out an inspection under subsections (1) and (2).
- (4) If a person assigned to enforce this By-law is satisfied that a contravention of this By-Law has occurred, he or she may make an order requiring the person who contravened the By-Law or who caused or permitted the contravention or the owner or occupier of the property on which the contravention occurred to discontinue the contravening activity.
- (5) An order under subsection (4) shall set out:
 - (a) reasonable particulars of the contravention adequate to identify the contravention and the location of the property on which the contravention occurred; and
 - (b) the date or dates by which there must be compliance with the order.
- (6) If a person assigned to enforce this By-law is satisfied that a contravention of this By-law has occurred, he or she may make an order requiring the person who contravened the By-law or who caused or permitted the contravention or the owner or occupier of the property on which the contravention occurred to do work to correct the contravention.
- (7) An order under subsection (6) shall set out:
 - (a) reasonable particulars of the contravention adequate to identify the contravention and the location of property on which the contravention occurred;
 - (b) the work to be completed; and
 - (c) the date or dates by which the work must be complete.
- (8) An order to discontinue contravening activity made under subsection (4) or an order to do work made under subsection (6) may be served personally or by registered mail to the last known address of:
 - (a) the owner or occupier of the property where the contravention occurred; and

(b) such other persons affected by it as person assigned to enforce this By-law making the order determines.

Service by registered mail shall be deemed to have taken place five business days after the date of mailing.

(9) In addition to service given in accordance with subsection (8), an order to discontinue contravening activity made under subsection (4) or an order to do work made under subsection (6) may be served by a person assigned to enforce this By-law by placing a placard containing the order in a conspicuous place on the property where the contravention occurred.

(10) Where service cannot be given in accordance with subsection (8), sufficient service is deemed to have taken place when given in accordance with subsection (9).

(11) Where a person does not comply with a direction or a requirement, including an order, under this By-Law to do a matter or thing, the Director of Licensing, with such assistance by others as may be required, may carry out such direction or requirement at the person's expense.

(12) The City may recover the costs of doing a matter or thing under subsection (11) by action or by adding the costs to the tax roll and collecting them in the same manner as property taxes and such costs shall include an interest rate of 15 per cent commencing on the day the City incurs the costs and ending on the day the costs, including the interest, are paid in full.

(13) The Director of Licensing is authorized to give immediate effect to any direction or requirement where the costs of carrying out the direction or requirement do not exceed \$10,000 and, where the costs do exceed \$10,000, as the City's Council may authorize.

26b. Pursuant to Section 431 of the Municipal Act, 2001, when a person has been convicted of an offence under this By-Law, any court of competent jurisdiction may, in addition to any other penalty or other remedy imposed, make an order prohibiting the continuation or repetition of the offence.

- 27.(1) Every person who contravenes Schedules 1 or 4 and every director or officer of a corporation who concurs in such contravention by the corporation is guilty of an offence and upon conviction liable to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding one year, or to both.
- (2) Every person, including every person who fails to comply with an order made under section 26a., who contravenes this By-law, except Schedules 1 or 4, and every director or officer of a corporation who concurs in such contravention by the corporation is guilty of an offence and upon conviction liable to a fine not exceeding \$25,000.
- (3) Where a corporation is convicted of an offence under subsection (1) or (2), the maximum penalty that may be imposed on the corporation is \$50,000 and not as provided in those subsections.
- 28.(1) A notice given or required to be given to an applicant or licensee under this By-law, may be sent by facsimile, regular mail or registered mail to a number or address supplied by the applicant or licensee, or delivered personally to the applicant or licensee, or to a person in charge of the premises, vehicle, cart or cycle licensed or required to be licensed under this By-law.
- (2) Notwithstanding any other section of this By-law, a notice of refusal to issue, or a notice of revocation or suspension of a licence is effective upon personal delivery to a person in charge of the business premises, vehicle, cart or cycle licensed.

SEVERABILITY AND SAVING

29. If a court of competent jurisdiction declares a part or the whole of any provision of this By-law to be invalid or of no force and effect, the provision or part is deemed severable from this By-law, and it is the intention of Council that the remainder survive and be applied and enforced in accordance with its terms to the extent possible under the law.

SCHEDULES

30. The following Schedules form part of this By-law:

Schedule 1	Adult Entertainment Establishments
Schedule 2	Auctioneers
Schedule 3	Bed and Breakfasts, Hotels and Motels
Schedule 4	Body Rub Parlours
Schedule 5	Pawnbrokers ⁽¹⁷⁻¹²⁹⁾
Schedule 6	Food Service Vehicles
Schedule 7	Kennels and Pet Shops ⁽¹⁷⁻⁰⁶⁹⁾
Schedule 8	Limousines
Schedule 9	Lodging Houses
Schedule 10	Salvage Businesses ⁽¹⁷⁻¹³⁰⁾
Schedule 11	Payday Loan Businesses ⁽¹⁶⁻⁰⁵³⁾
Schedule 12	Pedlars
Schedule 13	Personal Aesthetic Services
Schedule 14	Tree Cutting Services ⁽¹⁹⁻¹⁷⁵⁾
Schedule 15	Personal Wellness Services Establishments
Schedule 16	Public Garages
Schedule 17	Public Halls and Places of Amusement
Schedule 18	(Reserved) ⁽¹⁷⁻⁰⁵⁵⁾
Schedule 19	(Reserved)
Schedule 20	Residential Care Facilities
Schedule 21	Food Premises
Schedule 22	Second-Hand Goods, Jewellery and Precious Metals Businesses ⁽¹⁷⁻¹²⁸⁾
Schedule 23	Seasonal Produce Vendors
Schedule 24	Personal Transportation Providers ⁽¹⁷⁻⁰¹³⁾
Schedule 25	Taxicabs
Schedule 26	Mobile Sign Leasing or Renting
Schedule 27	Tobacco and Electronic Cigarette Retailers ⁽¹⁷⁻⁰⁵⁶⁾
Schedule 28	Tow Trucks

Schedule 29

Trades

Schedule 30

Transient Traders

31. City of Hamilton By-law No. 06-213 and all amendments thereto are repealed upon the coming into force and effect of this by-law.
32. City of Hamilton By-law No. 06-234 is repealed.
33. This by-law may be referred to as the "City of Hamilton Licensing Code". A reference to the City of Hamilton Licensing Code in this or any other City of Hamilton By-Law is deemed to be a reference to this By-Law.
34. This by-law comes into force and effect on the date it is passed and enacted.

PASSED **and** **ENACTED** this
day of _____ ,

MAYOR

CLERK

SCHEDULE 20

RESIDENTIAL CARE FACILITIES

PART I: INTERPRETATION

1. In this Schedule:

“activities of daily living” means the activities of an individual that maintain their sufficient nutrition, hygiene, warmth, rest and safety;

“additional care” means community services such as long term care services, or rehabilitative services that can be provided to a tenant either in the residential care facility or in the community;

“ambulatory” means in respect of an individual, that they are independently mobile, by mechanical or any other means, or with minimal assistance of another person;

“attic” means the space between the roof and the ceiling of the top storey of a residential care facility or between a dwarf wall and a sloping roof of a residential care facility, which is not finished in such a way as to provide suitable habitation for tenants;

“basement” means a storey of a residential care facility located below the first storey which is more than 50 per cent below grade or which is not finished in such a way as to provide suitable habitation for tenants;

“care services” means advice, information, or supervision provided to tenants in the activities of daily living and may also include:

- (a) periodic personal care, as required, such as the giving of medications, bathing assistance, assistance with feeding, incontinence care, dressing assistance, assistance with personal hygiene, and ambulatory assistance;
- (b) provision of recreational or social activities, housekeeping, laundry services, and assistance with transportation;

- (c) personal emergency response services, including assistance in evacuating under emergency conditions due to mental limitations and/or developmental handicaps and limitations of the tenants;

“drug” means any substance or mixture of substances manufactured, sold or represented for use in:

- (a) the diagnosis, treatment, mitigation or prevention of a disease, disorder, abnormal physical state, or the symptoms thereof, in an individual; or
- (b) restoring, correcting or modifying of organic functions in an individual;

“Guidelines” means the guidelines for the operation of facilities licensed under this Schedule, which the Medical Officer of Health is authorized to issue under subsection 57(a);

“long term care facility” means a nursing home under the Nursing Homes Act, an approved charitable home for the aged under the Charitable Institutions Act or a home under the Homes for the Aged and Rest Homes Act provided that on the day the Long-Term Care Homes Act, 2007 comes into force, “long term care facility” means a place that is licensed under that Act;

“Officer” means:

- (a) a building inspector of the Building Division of the Planning and Economic Development Department;
- (b) an inspector of the Fire Department;
- (c) a public health inspector employed in the Public Health Services Department;
- (d) a registered nurse employed in the Public Health Services Department;

(e) an officer appointed by the Director of Licensing.

“operator” means a person licensed under this Schedule to operate a residential care facility;

“physician” means a legally qualified medical practitioner;

“prescribed”, when used with reference to a drug or mixture of drugs, means that a legally qualified medical practitioner or a dentist has directed the dispensing of the drug or mixture of drugs to a named individual;

“prescription drug” means a drug that may be dispensed by a pharmacist only upon the direction of a physician or dentist;

“rehabilitative services” means services for a person with a physical, mental, or developmental handicap, and includes,

- (a) homemaker services,
- (b) day care,
- (c) training and rehabilitation,
- (d) casework and counselling, and
- (e) training in life skills;

“residential care facility” means a residential complex that is:

- (a) occupied or intended to be occupied by four or more persons for the purpose of receiving care services, whether or not receiving the services is the primary purpose of the occupancy; or
- (b) licensed or required to be licensed under the Retirement Homes Act, 2010,

and the term “facility” has a corresponding meaning.

“residential care facility information package” means an information package that contains the information required to be contained in an information package under section 140 of the Residential Tenancies Act, 2006 including notice that a complaint about the operation of the facility may be made by telephoning the City of Hamilton’s Public Health Services at 905-546-2063;

“single facility incident” means a situation, or the likelihood of an impending situation, which could reasonably be expected to have an abnormal effect on the health, safety, welfare, or personal property of one or more tenants of a facility, and which, because of its nature or magnitude, requires a controlled and co-ordinated response by the operator;

“tenant of a facility” means a person, other than an operator or employee, who

- (a) resides in a residential care facility, and to whom the operator provides care services;
- (b) is ambulatory; and
- (c) has decreased physical or mental functional ability;

and the term “tenant” has a corresponding meaning; and

“volunteer” means a person, other than an operator or an employee, who, as part of an organized volunteer program, provides services or work at a residential care facility for no wage or salary.

PART II: LICENSING

GENERAL

2. No person shall operate a residential care facility without a licence.
- 2.1 The following provisions of this Schedule do not apply with respect to tenants subject to the Retirement Homes Act, 2010 but only to the extent that tenants of the same facility not subject to the Retirement Homes Act, 2010 are unaffected:
 - subsection 5(1)(e);
 - section 7;
 - subsection 12(c);
 - paragraphs 12(f)(ii) to (v);
 - subsection 12(g);
 - section 13 to the extent that the section applies to volunteers;
 - section 15;
 - section 16;
 - section 17;
 - sections 32 to 53.
3. A licence shall not be issued for a facility established after October 1, 1980, which is situated in a location where, at any hour, the noise level exceeds 58 decibels.
4. The authorized capacity of a facility, as determined by the Medical Officer of Health, and the provisions of the applicable zoning by-laws, shall be endorsed on the licence issued to the facility.

INFORMATION TO BE PROVIDED BY APPLICANT

- 5.(1) Every applicant for a licence, in addition to complying with the General Provisions of this By-law, shall submit, before the licence may be issued:
 - (a) a signed form certifying that the applicant is at least eighteen years of age at the time of application;
 - (b) a copy of an Ontario Secondary School Graduation Diploma or evidence satisfactory

to the Director of Licensing of equivalent standing from the Ontario Ministry of Education and Training;

(c) evidence satisfactory to the Director of Licensing of employment experience in work comparable to the administration of the facility which they propose to operate;

(d) a premises plan of the residential care facility showing all buildings or other structures, parking areas and walkways on the property where the residential care facility is located and all entrances/exits, bedrooms, beds, clothes closets, dining areas, sitting rooms and toilet facilities, sitting rooms in the residential care facility; and

(e) a single facility incident plan satisfactory to the Medical Officer of Health which shall include the premises plan under paragraph (d).

(2) Paragraph (1)(b) does not apply to a person who was the holder of a licence to operate a residential care facility under a by-law of a former area municipality on July 10, 2001, the date that the City of Hamilton Licensing Code, By-law 01-156, came into force.

6. Every applicant for a licence or a licence renewal, in addition to complying with the General Provisions of this By-law, shall submit to the Director of Licensing before the licence is issued or renewed, the following:

(a) upon applying for a licence and every third year thereafter, upon applying for a licence renewal, a certificate from the Electrical Safety Authority that the facility complies with the Ontario Electrical Safety Code;

(b) a certificate from the Medical Officer of Health, that the facility complies with the applicable health and safety standards in this Schedule;

(c) a certificate from the insurer of the facility, that the insurance coverage required under subsection 12(i) of this Schedule is in effect for the facility; and

(d) documentation as required under section 14 as to the age and education of the operator's employees.

7. Every applicant for a licence renewal, in addition to complying with the General Provisions of this By-law, shall submit to the Issuer of Licence before the licence is renewed an updated single facility incident plan satisfactory to the Medical Officer of Health.
8. Where the applicant for a licence or for a licence renewal is a corporation or a partnership, at least one officer or director of the corporation or one partner of the partnership shall submit, in respect of themselves, the certificates or other documents required to be submitted by an individual under the General Provisions of this By-law or under this Schedule.
9. Every operator shall advise the Director of Licensing immediately in writing of any change to the information required to be filed in respect of their licence under the General Provisions of this By-law or this Schedule.

EXPIRATION

10. No licence issued under this Schedule is transferable.

11. Where:

- (a) by a transfer of existing shares, by an issue of new or existing shares, or by some other means, the controlling interest in a corporation holding a licence is determined by the Director of Licensing to have changed hands; or
- (b) one or more partner in a partnership holding a licence is determined by the Director of Licensing to have ceased to be a partner or the partnership is determined by the Director of Licensing to have ceased to exist,

a licence issued under this Schedule shall be deemed to have expired.

PART III: OPERATOR

GENERAL

12. The operator shall:

- (a) ensure that the applicable provisions of this Schedule, including the Guidelines, are complied with;
- (b) provide a certificate from the Electrical Safety Authority that the facility complies with the Ontario Electrical Safety Code as required by the Director of Licensing;
- (c) keep a copy of the single facility incident plan in the facility in a readily accessible location;
- (d) ensure that there are no firearms and no prohibited or restricted weapons, as set out in federal statutes, regulations, Orders in Council or otherwise by the federal government, kept in the facility;
- (e) ensure that access to a telephone is available at all times within the facility;
 - (i) for employees and volunteers; and
 - (ii) for tenants of the facility:
 - 1. with its own, separate line;
 - 2. in a private setting, not including a lobby, hallway or passageway;
 - 3. where a tenant using the telephone cannot be easily overheard;
- (f) post in a conspicuous place in the facility:
 - (i) the current licence for the facility;
 - (ii) a notice stating the name of the operator or an employee who is present at the facility and has the primary duty of supervising the tenants as required under

paragraph 17(2)(b);

(iii) a notice stating the operator's name, address and telephone number, and the name, address and telephone number of the employee who has been designated under paragraph 17(2)(a);

(iv) a notice stating the operator is licensed by the City of Hamilton and that a complaint about the operation of the facility may be made by telephoning the City of Hamilton at 905-546-2063;

(v) rules for the conduct of employees and tenants of the facility;

(vi) a notice of the collection of personal information in a form approved by the Director of Licensing which contains:

1. the legal authority for the collection of personal information about tenants and employees of the facility by Officers;
2. the principal purpose or purposes for which the personal information is intended to be used; and
3. the title, business address and business telephone number of an officer or employee of the City who can answer questions from individual tenants and employees of the facility about the collection of their personal information;

(g) comply with all applicable access to information and protection of privacy legislation;

(h) ensure that the authorized capacity of the facility is not exceeded; and

(i) ensure that a policy of commercial general liability insurance, including coverage for bodily injury and property damage resulting from the operation of the facility, with an inclusive limit of at least one million dollars (\$1,000,000) per claim or occurrence, is in force at all times when one or more tenants is present in the facility.

- (i) where both tenants who are subject to the Retirement Homes Act, 2010 and tenants who are not subject to the Retirement Homes Act, 2010 reside in the facility, ensure that:
 - (i) an up-to-date list of tenants who are not subject to the Retirement Homes Act, 2010 is maintained; and
 - (ii) the person with the primary duty of supervising the tenants under paragraph 17(2)(b) provides the list and identifies tenants who are not subject to the Retirement Homes Act, 2010 immediately upon the request of an Officer.

EMPLOYEES AND VOLUNTEERS

- 13.(1) The operator shall give every employee and volunteer a notice of the collection of information in a form approved by the Director of Licensing and the Medical Officer of Health which describes the procedures under this Schedule for the collection of personal information about employees and volunteers, at the time when an individual commences employment or volunteering at the facility.
- (2) The notice under subsection (1) shall also contain:
 - (a) the legal authority for the collection of personal information about employees or volunteers by Officers;
 - (b) the principal purpose or purposes for which the personal information is intended to be used; and
 - (c) the title, business address, and business telephone number of an officer or employee of the City who can answer questions from an employee of or a volunteer at the facility about the collection of the employee's or volunteer's personal information.
- (3) Where the operator has not given an employee or volunteer a notice under subsection (1), the operator shall give the employee or volunteer a letter in a form approved by

the Director of Licensing and the Medical Officer of Health which contains the information set out in subsections (1) and (2), within seven days after being directed to do so by the Director of Licensing.

- (4) Notwithstanding subsection (1), the operator shall give a notice of the collection of personal information to an employee or volunteer within seven days after being directed to do so by an Officer.
14. The operator shall provide evidence satisfactory to the Director of Licensing, within seven days after an employee commences employment, that the employee:
- (a)(i) is sixteen years of age but less than eighteen years of age; or
 - (ii) eighteen years of age or older;
 - (b) if the employee is eighteen years of age or older;
 - (i) has an Ontario Secondary School Certificate, or equivalent standing; or
 - (ii) employment experience, satisfactory to the Director of Licensing, in comparable work;
 - (c) whose duties require communication with the tenants, is able to communicate clearly and effectively with the tenants.
- 15.(1) The operator shall provide evidence satisfactory to the Director of Licensing within thirty days after an employee commences employment that the employee has successfully completed of the new staff in-service orientation training as described in the Guidelines.
- (2) Where an employee's duties involve the supervision of tenants, the operator shall provide evidence satisfactory to the Director of Licensing within thirty days of each six month period after the employee commences employment that the employee

has successfully completed at least five hours of continuing education as described in the Guidelines.

16. The operator shall provide evidence satisfactory to the Director of Licensing, within seven days after an employee commences employment or a volunteer commences volunteering, that the employee or volunteer has had a negative TB test not more than thirty days before commencing employment or volunteering.

RESPONSIBILITY FOR OPERATION AND SUPERVISION

- 17.(1) In this section "employee" means an employee who is eighteen years of age or older.

(2) The operator shall ensure:

- (a) that one employee is designated as the individual responsible for the operation of the facility and can be contacted immediately at the telephone number posted for that employee under subsection 12(f) at any time when the operator cannot be contacted immediately at the telephone number posted for the operator under subsection 12(f);
- (b) that at all times, the operator or an employee is present at the facility who has the primary duty of supervising the tenants and is able to carry out this duty without interference, including but not limited to any interference caused by other duties or by distractions; and
- (c) the safety of the tenants while the tenants are at the facility.

OPERATIONS AND MAINTENANCE

Water Supply

18. The operator shall ensure that there is an adequate supply of potable and of hot water:

- (a) which can provide at least 227.303 litres (50 gallons) for each tenant and employee, per day;
- (b) of at least .362 kilograms pressure per square centimetre (8 pounds per square inch), when a fixture is in use; and
- (c) for water serving all bath tubs, showers and hand basins used by tenants, of a temperature of not more than 49° Centigrade (120° Fahrenheit) and controlled by a device, inaccessible to the tenants, that regulates the temperature.

Bedrooms and Storage

19. The operator shall ensure that:

- (a) a bedroom for a tenant or tenants in a facility established before October 1, 1980 provides a minimum of 16.8 cubic meters (600 cubic feet) of air space and 6.96 square meters (75 square feet) of floor space for each tenant;
- (b) a bedroom for a tenant or tenants in a facility constructed, renovated, added to or altered on or after June 1, 1980 provides a minimum, exclusive of the space provided for built-in or portable clothes closets, of:
 - (i) 10.22 square meters (110 square feet) of floor space in a single-bed unit, provided that this area may be reduced to 9.30 square meters (100 square feet) where the facility provides a living room and one or more dining area;
 - (ii) 16.72 square meters (180 square feet) of floor space in a two-bed unit;
 - (iii) 25.08 square meters (270 square feet) of floor space in a three-bed unit;
 - (iv) 29.73 square meters (320 square feet) of floor space in a four-bed unit;
- (c) a bedroom for more than one tenant shall be arranged so that all beds are at least

.91 meters (3 feet) apart;

(d) a bedroom for one or more tenants:

(i) has one or more windows to the outside that:

1. except where another means of ventilation is provided, can be opened to provide an open area of at least 5% of the floor area of the room;
2. is not less in total area than 10% of the floor area of the room; and
3. is screened from May 1 to October 31;

(ii) is not to be part of a lobby, hallway, passageway, closet, bathroom, stairway, basement, attic, kitchen, storage room, boiler room, laundry room, activity room, utility room, chapel, sitting room, administrative office, or tenant examination room;

(e) a bedroom is provided with a door and a lock which is of a type that can be:

- (i) secured by the tenant or tenants of the bedroom when they are inside or outside of the bedroom; and
- (ii) opened from the outside by the operator or an employee in case of an emergency;

(f) every bed provided for a tenant of a facility is of a minimum width of 91.44 centimetres (36 inches);

(g) a bedroom in a facility in respect of which a licence was not issued under a by-law of a former area municipality on July 10, 2001, the date that the City of Hamilton Licensing Code, By-law 01-156, came into force, does not contain more than two beds;

(h) where more than one bed is located in a bedroom, a moveable partition is provided between the beds to ensure the privacy of each tenant, unless the tenants who

occupy the bedroom jointly inform the operator that they do not require such a partition;

- (i) sufficient clean towels, face cloths and bed linen are provided for use of the tenants of a facility, with a supply of such linen:
 - (i) available at all times in the facility: and
 - (ii) changed at least one a week;
- (j) a clothes closet is provided for each tenant in their bedroom;
- (k) secure storage space, no less than 0.15 m³ in size and accessible only to the tenant and the operator, is provided for each tenant; and
- (l) a rack on which to hang towels and face cloths is provided for each tenant.

Dining Area

20. The operator shall ensure that one or more dining areas is provided, with a minimum floor space of 1.85 square meters (20 square feet) per tenant and capable of accommodating at least one half of the authorized capacity of the facility at one time.

Sitting Rooms

21. The operator shall ensure that:

- (a) one or more sitting rooms is provided within each facility;
- (b) the minimum total space for a sitting room shall be the greater of:
 - (i) an area equal to 1.39 square meters (15 square feet) of floor space for each tenant; or

- (ii) 11.148 square meters (120 square feet).

Toilet Facilities

22. The operator shall ensure that:

- (a) a toilet room or bathroom are not within, or open directly into, any dining room, kitchen, pantry, food preparation room, or storage room;
- (b) a toilet is not located within a bedroom;
- (c) toilet facilities are provided in at least the following ratios:
 - (i) for an authorized capacity of four to seven tenants: one wash basin, one flush toilet, and one bath tub or shower;
 - (ii) for an authorized capacity of a fraction of seven tenants beyond the first seven: one wash basin and one flush toilet; and
 - (iii) for an authorized capacity of each additional seven tenants beyond the first seven: one wash basin, one flush toilet, and one bath tub or shower;
- (d) a bathroom, toilet, or shower room is provided with a door and a lock which is of a type that can be readily released from the outside in case of an emergency;
- (e) one bathroom toilet and shower room shall be of a type that is suitable for use by persons confined to wheelchairs, where one or more such persons have been admitted to the facility as tenants;
- (f) the bottom of each bath tub is furnished with non-skid material; and
- (g) each bath tub and each toilet is furnished with at least one grab bar or similar device of a type that will ensure the safety of tenants.

Waste

23. The operator shall ensure that waste is stored in receptacles which are:

- (i) insect and rodent-proof;
- (ii) water-tight;
- (iii) provided with a tight-fitting cover; and
- (iv) kept clean.

Lighting

24. The operator shall ensure that lighting of the exterior and interior of the facility complies with ANSI/IESNA RP-28-07 (the "Recommended Practice for Lighting and the Visual Environment for Senior Living" approved by the Illuminating Engineering Society of North America) as amended or replaced from time to time.

Ventilation

25. The operator shall ensure that every room shall be adequately ventilated by natural or mechanical means and shall be so designed and installed that it meets the applicable requirements of the Ontario Building Code.

Ramps and Stairways

26. The operator shall ensure that guard, handrail and slip-resistance requirements for ramps and stairways shall be so designed and installed that they meet the applicable requirements of the Ontario Building Code.

Floors

27. The operator shall ensure that non-skid finishes and coverings are installed on every

floor.

Balconies

28. The operator shall ensure that balustrades for balconies shall be so designed and installed that they meet the applicable requirements of the Ontario Building Code.

Construction and Zoning

29. The operator shall ensure that:

- (a) no construction, renovation, addition or alteration of a facility is carried out, except in compliance with this Schedule, ANSI/IESNA RP-28-07 as amended or repaced from time to time, the Ontario Building Code, the Ontario Fire Code, and under a valid building permit; and
- (a) the applicable zoning by-laws are complied with.

30. The operator:

- (a) shall submit to the Director of Licensing an operational plan, addressing the operation of their facility during construction, renovation, addition or alteration, a minimum of 90 days before commencing such construction, renovation, addition or alternation; and
- (b) shall not commence construction, renovation, addition or alteration of a facility until the Director of Licensing has given them written approval of the operational plan submitted under subsection (a).

General Health and Safety

31. The operator shall ensure that:

- a. the facility is kept in a clean and sanitary condition, including but not limited to

providing for professional pest control as needed;

- (b) the facility is free from hazards to the safety of tenants of the facility, employees, volunteers or visitors;
- (c) the facility is supplied with heat in accordance with City of Hamilton By-law 04-091 with respect to the supply of adequate and suitable heat for rental residential premises;
- (d) all food storage, preparation and service areas meet the requirements of the Food Premises Regulation under the Health Protection and Promotion Act, and
- (e) the facility meets all requirements of the Building Code under the Building Code Act, 1992 and of the Fire Code under the Fire Protection and Prevention Act, 1997.

PART IV: ADMISSION OF TENANTS

- 32.(1) The operator shall give every individual a notice of the collection of personal information in a form approved by the Director of Licensing and the Medical Officer of Health which describes the procedures under this Schedule for the collection of personal information about tenants before obtaining an assessment of the individual under section 33.
- (2) The notice under subsection (1) shall also contain:
- (a) the legal authority for the collection of personal information about tenants by inspectors;
 - (b) the principal purpose or purposes for which the personal information is intended to be used; and
 - (c) the title, business address, and business telephone number of an officer or employee of the City who can answer questions from a tenant of the facility about the collection of his or her personal information.

- (3) Where the operator has not given a individual the notice under subsection (1) and the individual has been admitted as a tenant, the operator shall give the individual a letter in a form approved by the Director of Licensing and the Medical Officer of Health, which contains the information set out in subsections (1) and (2), within seven days after being directed to do so by the Director of Licensing.
 - (4) Notwithstanding subsection (1), the operator shall give a notice of the collection of personal information to a tenant within seven days after being directed to do so by a registered nurse employed in the Public Health Services Department.
- 33.(1) Prior to admitting an individual as a tenant of a facility, the operator shall obtain an up-to-date assessment from a physician or other member of a regulated health profession employed by a referring agency designated in the Guidelines, which provides an opinion as to the level of care services the individual requires.
- (2) An operator shall determine on the basis of the assessment referred to in subsection (1), and the criteria for admission set forth in the Guidelines, whether the level of care services which is provided in the home is adequate to meet the individual's needs in relation to the activities of daily living.
34. An operator shall not admit an individual as a tenant who is not ambulatory, who for the protection of themselves or others requires placement in a locked unit or who requires a level of care services which the operator is not authorized to provide in the facility, except in accordance with the Guidelines.
35. An operator shall not admit an individual as a tenant without:
- (a) their consent; or
 - (b) the consent in writing of their next-of-kin, or attorney for personal care, as the case may be, if the individual has been declared mentally or physically incapable of giving consent.

36. The operator shall enter into a written tenancy agreement with each individual who is admitted as a tenant of the facility and shall give each such individual a residential care facility information package prior to entering into the tenancy agreement.

PART V: CARE SERVICES

37. The operator shall provide care services to each tenant in a facility in accordance with the Guidelines.

DRUGS

38. The operator shall ensure that all prescription drugs:

- (a) are kept in one or more locked drug cabinets, unless the drug requires refrigeration, or must be kept with the tenant for immediate use; and
- (b) are made available only:
 - (i) to those tenants for whom they have been prescribed, as directed by a physician;
 - (ii) in a unit-dose medication dispensing system as described in the Guidelines.

39. The operator shall allow self-medication by the tenants of a facility under specified conditions set out in the Guidelines.

40. If a tenant is prescribed a drug that is a controlled substance as defined in the Controlled Drugs and Substances Act (Canada) and the operator has not completed a medication course as described in the Guidelines within the preceding twelve months, then they shall complete such a medication course no more than thirty days after the drug has been prescribed.

NUTRITIONAL CARE

41. The operator shall ensure that the tenants of a facility are served daily sufficient food of good quality and adequate nutritional and caloric value as described in the Guidelines.

INFECTION CONTROL

42. The operator shall ensure that all requirements for the control of infectious diseases that are set forth in Guidelines are complied with, including recommendations for tuberculosis screening, immunization programs, reporting requirements, and outbreak control measures.

MEDICAL CARE

43.(1) Each tenant of a facility or their next-of-kin, or attorney for personal care, as the case may be, shall arrange for emergency medical care for the tenant, as required.

(2) Where the tenant, their next-of-kin, or attorney for personal care is unable to arrange for emergency medical care, or where such emergency medical care is unavailable, the operator shall arrange for emergency medical care for the tenant.

44. The operator shall allow a tenant's physician or a member of a regulated health professional who is providing care or treatment to a tenant to enter the facility at any reasonable time for the purpose of attending to the health of the tenant.

ADDITIONAL CARE

45.(1) Wherever the tenant's physician, the operator, the Medical Officer of Health, or a member of a regulated health profession who is employed by a referring agency designated in the Guidelines, determines that a tenant requires additional care services for their special needs and the tenant, their next-of-kin, or attorney for personal care has not arranged for such additional care, the operator shall ensure that such additional care is made available to the tenant while the tenant continues to reside in the facility.

(2) In ensuring that additional care services are provided under subsection (1), the

operator shall:

- (a) consult with the tenant, their next-of-kin, attorney for personal care and/or a community worker, and prepare a plan which shall include a description of the health issue and the services being provided to address that health issue and which may include additional care services, such as additional personal care services and/or rehabilitative services;
- (b) ensure that additional personal care services are provided through a referral to a community care access centre or to a private community agency;
- (c) where the tenant requires rehabilitative services, support the tenant's rehabilitative goals in the facility and in the community, which may include assisting tenant with meal preparation, laundry, household duties and self-medication.

46. The operator or the employee designated under paragraph 17(2)(a) shall inform the tenant, as soon as possible, of the provisions of section 148 of the Residential Tenancies Act, 2006 and may arrange for the transfer of the tenant:

- (a) to a long term care facility or other appropriate living arrangement, with the agreement of the tenant, where an operator is informed by:
 - (i) a community care access centre that a tenant of a facility is eligible for admission to a long term care facility;
 - (ii) the tenant's physician or the Medical Officer of Health, that the tenant no longer requires the level of care services which the facility is authorized to provide; or
 - (iii) the tenant's physician or the Medical Officer of Health, that the tenant requires a level of care services that the operator is not authorized to provide; or

(b) to a long term care facility, with the agreement of the tenant, where a tenant requires placement in a locked unit for the protection of themselves or others.

47. The operator shall ensure that no facility is equipped with a locked unit provided that the Operator of any facility with a locked unit on date of passage shall make the necessary changes such as removing locks as soon as possible to eliminate such locked units.

48.(1) Where a tenant is transferred from a residential care facility to a long term care facility or to another facility licensed under this By-law, the operator shall request the tenant, or, if they are unable to act, their next-of-kin or attorney for personal care, to complete an authorization in Form 1 for the release of information pertaining to the tenant to the long term care facility or other licensed residential care facility.

(2) Where a tenant is transferred from a residential care facility to another facility licensed under this By-law, or to a hospital, the operator shall complete a transfer in Form 2.

PART VI: RECORDS AND REPORTS

49.(1) The operator shall maintain an up-to-date, alphabetical list of the tenants of a facility which includes the name, sex, date of birth, age and date of admission of each tenant.

(2) The operator shall maintain a separate file for each tenant, which contains the following information:

(a) sex, date of birth, age, date of admission and date of discharge or death;

(b) name, address and telephone number of next-of-kin;

(c) name and telephone number of the tenant's attorney for personal care, if any;

- (d) the name and telephone number of the tenant's physicians;
 - (e) completed assessment;
 - (f) the name, address and telephone number of any community agency which is providing support to the tenant;
 - (g) tuberculin or chest x-ray testing results, and the dates thereof;
 - (h) a brief medical history of the tenant, in respect of the care services provided by the operator under the tenancy agreement (section 36) or any additional care services made available by the operator (subsection 45(1)), from the date of their admission, including medication information, laboratory results, physicians' orders and staff notes or other records necessary to determining the level of care services provided;
 - (i) a residential care facility information package;
 - (j) particulars of each accident suffered by the tenant while in the facility; and
 - (k) any completed Form 1, Form 2 or Form 3.
50. The operator shall make a record in Form 3 of every occurrence with respect to a tenant of assault, injury or of death that has been reported to coroner, and shall place the completed Form 3 in the tenant's file and keep it available for inspection by the Medical Officer of Health.
51. The operator shall ensure that any document or other record of any kind which contains personal information about a tenant, other than the personal information described in subsections 49(1) and (2) and section 50, is maintained in a file which is separate from the file which is maintained pursuant to subsection 49(2) or any other provisions of this Schedule or the Guidelines.

52. The operator shall ensure that any document or other record of any kind which contains personal information about the performance of duties by an employee of their facility, other than personal information described in sections 14, 15 and 16 and subsections 12(f), is maintained in a file which is separate from the file which is maintained pursuant to the provisions of this Schedule or the Guidelines.
53. The operator shall ensure that documents or records which are kept pursuant to this Schedule or the Guidelines are kept for at least one year after the tenant, employee or volunteer ceases to be a tenant, employee or volunteer respectively.

PART VII: INSPECTION AND ENFORCEMENT

- 54.(1) The Medical Officer of Health, the General Manager of Planning and Economic Development, the Chief Fire Prevention Officer, the Chief of the City of Hamilton Police, the Director of Licensing, or an Officer, at all reasonable times, may inspect any facility and the list of tenants required by subsection 49(1) where that subsection is applicable.
- (2) The Medical Officer of Health or a member of a regulated health profession authorized by them, at all reasonable times, may inspect the file of any tenant required by subsection 49(2) where that subsection is applicable.
55. The operator shall allow the Medical Officer of Health or a member of a regulated health profession authorized by them, as often as they deem reasonably necessary, to make inspections of the facility and its operation in order to determine compliance with this Schedule.
56. The Medical Officer of Health, the Director of Licensing, the General Manager of Planning and Development and the Chief Fire Prevention Officer are authorized to enforce the provisions of this Schedule which are within their respective jurisdiction, and to serve such notices and make and serve such orders as may be necessary to ensure compliance by the operator.
57. The Medical Officer of Health may:

- (a) issue Guidelines for the operation of facilities licensed under this By-Law, including any matters relating to the health, safety, and well-being of the tenants of a facility, and shall provide a copy of any such Guidelines and any subsequent additions or revisions to the operator of each facility licensed under this By-Law;
- (b) prescribe the format and content of any forms or other documents required under this Schedule;
- (c) designate the referring agencies which may employ a member of a regulated health profession for the purposes of making an assessment under subsection 33(1) and making a determination under subsection 45(1).

CITY OF HAMILTON LICENSING CODE –
SCHEDULE 20 – RESIDENTIAL CARE FACILITIES
GUIDELINES

**CITY OF HAMILTON
LICENSING CODE**

**SCHEDULE 20
RESIDENTIAL CARE FACILITIES**

Guidelines

CITY OF HAMILTON LICENSING CODE –
SCHEDULE 20 – RESIDENTIAL CARE FACILITIES
GUIDELINES

INTRODUCTION

This document contains the Guidelines as issued by the Medical Officer of Health under the City of Hamilton Licensing Code, Schedule 20 - Residential Care Facilities.

The Guidelines are defined in Schedule 20 as “guidelines for the operation of facilities licensed under this Schedule, which the Medical Officer of Health is authorized to issue under subsection 57(a).”

Subsection 57(a) states “The Medical Officer of Health may issue Guidelines for the operation of facilities licensed under this By-law, including any matters relating to the health, safety, and well-being of the tenants of a facility, and shall provide a copy of any such Guidelines and any subsequent additions or revisions to the operator of each facility licensed under this By-law.”

This document is set up with the Schedule 20 standard at the beginning of each Part and the Guideline relating to the standard directly beneath. Some of the Guidelines have an Appendix containing additional information specific to the Guideline. These Appendices are found at the end of the document.

For further information on the Guidelines, contact the Public Health Services Department, Infectious Diseases Prevention and Control Program at (905) 546-2063 during business hours (Monday to Friday, 8:30 a.m. to 4:30 p.m.).

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PART II: LICENSING

Section 5 - Single Facility Incident Plan

The operator shall prepare a single facility incident plan, including a premises plan, satisfactory to the Medical Officer of Health, which shall be submitted to the Issuer of Licences and to the Medical Officer of Health before a licence is issued. A copy of the single facility incident plan shall be kept in the facility, in a readily accessible location. The single facility incident plan shall be updated annually.

- ❑ In Schedule 20, a “single facility incident” means a situation, or likelihood of an impending situation, which could reasonably be expected to have an abnormal effect on the health, safety, welfare, or personal property of one or more tenants of a facility, and which, because of its nature or magnitude, requires a controlled and co-ordinated response by the operator.
- ❑ A plan for responding to a single facility incident where tenants need to be removed for any length of time shall be prepared and followed. Examples of a single facility incident would be removal in case of a fire, flood or lack of hydro and/or heat. An updated single facility incident plan shall be submitted by the operator to the Issuer of Licences and the Medical Officer of Health upon renewal of their licence.
- ❑ See Appendix “A” for additional guidelines on how to prepare a single facility incident plan.
- ❑ A nurse inspector will assess single facility incident plans.
- ❑ A copy of the single facility incident plan shall be kept in an easy to reach place.
- ❑ The operator, employees and tenants shall review the single facility incident plan two times a year.

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PART III: OPERATOR

Section 15 – In-Service Orientation Training and Continuing Education

The operator shall ensure that employees have successfully completed a new staff in-service orientation training.

Every employee whose duties involve the supervision of tenants shall participate in continuing education to a minimum of five hours within each consecutive six months.

- ❑ In-service orientation training shall include a thorough review of the Schedule 20 requirements as well as the Guidelines. The employee must fully understand their role as an employee in a residential care facility.
- ❑ In Schedule 20, “continuing education” means a course, lecture, seminar or other professional activity in which an employee participates that meets the requirements, for example with respect to subject matter, of this Guideline.
- ❑ Employees who supervise tenants shall have at least five hours of education in a six month period. Continuing education hours are to be recorded as completed on an ongoing basis.
- ❑ Employees shall take continuing education in a subject matter relating to care services given in the facility, such as nutrition, medication, contagious diseases, medical and mental health conditions, community resources, the Residential Tenancies Act, 2006, etc.
- ❑ Employees shall be trained in how to give first aid treatment.
- ❑ A nurse inspector may ask that the operator or an employee take education in specific areas where there is a need to do so, for example, when the facility has started a new medication system and employees need to learn more about it.

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- ❑ The Residential Care Facilities Education Committee (RCFEC) plans education sessions for employees of residential care facilities. The RCFEC is made up of members from the Public Health Services Department, Community Services Department, residential care facilities, St. Joseph's Hospital Mountain Site Education Services and the Canadian Mental Health Association. If you are interested in becoming an RCFEC member or would like information on the Committee, please contact Public Health Services at (905) 546-2063 during business hours (Monday to Friday, 8:30 a.m. to 4:30 p.m.).

- ❑ The RCFEC plans monthly sessions on topics related to issues that Committee members and residential care facilities employees have identified. Notices are sent out prior to the session with all the details. Employees of residential care facilities are encouraged to attend these sessions.

- ❑ Continuing education hours may be earned by:
 - 1. reading material; for example, a professional article
 - 2. watching or listening to information; for example, watching an educational video or listening to educational cassettes or CDs. You can obtain such material from community agencies, libraries, and pharmacies, etc.
 - 3. attending workshops, education sessions or professional conferences, etc.
 - 4. attending education sessions planned by the RCFEC

- ❑ An up-to-date record of an employee's continuing education hours, including date, topic and time of education, shall be kept and signed by the operator and the employee. If an employee has proof of continuing education, for example, a certificate, then the operator shall include a copy in the record.

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Section 17 – Operation of Residential Care Facility and Supervision of Tenants

The operator shall ensure that, at all times, a qualified employee has been designated as the person responsible for the operation of the facility and either the operator or a qualified employee is present at the facility with the primary duty of supervising the tenants.

- ❑ The operator or at least one employee over the age of eighteen shall be on duty at all times.

- ❑ Enough employees shall be on duty to meet all tenants' care needs.
Recommendations may be made by a nurse inspector about the number of hours worked in a row by an employee and the number of employees on duty each shift. For example, it may be recommended that no employee work more than 12 hours in a row and that 2 employees be on duty for the night shift. The recommendations made by a nurse inspector shall be followed.

- ❑ All employees whose primary duty is the supervision of the tenants shall be familiar with Schedule 20 and the Guidelines.

- ❑ The name of the operator or employee who has the primary duty of supervising the tenants shall be posted for tenants to see during his/her shift.

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PART IV: ADMISSION OF TENANTS

Sections 33 and 34 - Assessment

Prior to admitting an individual as a tenant of a facility, the operator shall obtain an up-to-date assessment from a physician or other member of a regulated health profession employed by a referring agency designated in the Guidelines..

An operator shall determine on the basis of the assessment and the criteria for admission set forth in the Guidelines, whether the level of care services which is provided in the home is adequate to meet the individual's needs in relation to the activities of daily living.

An operator shall not admit an individual as a tenant who is not ambulatory who for the protection or themselves or others requires placement in a locked unit or who requires a level of care services which the operator is not authorized to provide in the facility, except in accordance with the Guidelines.

- ❑ A “regulated health profession” means a discipline under the Regulated Health Professions Act, 1991.
- ❑ The up-to-date assessment shall be obtained from member of one of the following disciplines regulated under the Regulated Health Professions Act, 1991: medicine, nursing, physiotherapy, or occupational therapy.
- ❑ In the case of the individual being referred on an emergency basis by an emergency service - for example, by the Crisis Outreach and Support Team (COAST) - the up-to-date assessment shall be obtained within one week of placement.
- ❑ A “referring agency” includes, but is not limited to, a hospital, a community agency, or a private clinic.
- ❑ The regulated health professional employed by a referring agency or the physician completing the assessment shall have specific knowledge of the individual's care needs.

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An assessment shall be completed not more than thirty days before the tenant is accepted into the facility. It shall include information on the mental and physical function of the individual in regards to activities of daily living. In Schedule 20, “activities of daily living” means activities of an individual that maintain his/her sufficient nutrition, hygiene, warmth, rest and safety. See Appendix “B” for a sample assessment form.

- ❑ The assessment referred to in subsection 33(1) shall be reviewed to determine if it is appropriate to place an individual the residential care facility.
- ❑ In addition to reviewing the assessment, the following criteria for admission shall be considered:
 1. Will the individual receive the necessary care services? In Schedule 20, “care services” means providing advice, information, or supervision to tenants in activities of daily living. This includes giving help at times with medications, bathing, feeding, dressing, incontinence care, mobility, and personal emergency care. A tenant may also need to have housekeeping, laundry services and assistance with transportation.
 2. Is the individual ambulatory? In Schedule 20, “ambulatory” means that an individual is independently mobile, by mechanical or any other means, or with the minimal assistance of another person. For example, an individual in a wheelchair must be able to move in the wheel chair on his/her own and must be able to move from a bed to a wheelchair on his/her own or with little help.
- ❑ An individual who is admitted to a residential care facility for the purpose of receiving respite care, is deemed to be a tenant for the purposes of Schedule 20 and is subject to the admission criteria.

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- An individual who has episodes of confusion causing him/her to wander shall not be admitted. Instead, the individual shall be referred to a facility offering a higher level of care.

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Section 35 - Consent for Admission

An individual shall not be admitted as a tenant in a facility without:

(a) his/her consent; or

(b) the consent in writing of his/her next-of-kin, or attorney for personal care, as the case may be, if the person has been declared mentally or physically incapable of giving consent.

- An individual must chose to move into a facility of his/her own free will.

- If the individual has been declared mentally or physically incapable of giving consent or the operator believes that the individual is not able to consent to the admission, then the next of kin or attorney for personal care shall consent in writing to the individual being admitted.

- The consent shall be signed, dated and placed on the tenant's file.

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Section 36 - Tenancy Agreement

The operator shall enter into a written tenancy agreement with each individual who is admitted as a tenant of the facility and shall give each such individual a residential care facility information package prior to entering into the tenancy agreement.

- ❑ The tenancy agreement shall include:
 - all ongoing care services and meals that the tenant agrees to pay for and the cost of each;
 - a statement that the tenant has the right to cancel the agreement within five days and to discuss the agreement with anyone;
 - how much the tenant will pay in rent and how often the payments will occur, for example, weekly, monthly or otherwise;
 - the term of agreement which may be fixed term or monthly/weekly/etc.;
 - the cost of optional services; and
 - a residential care facility information package.

- ❑ The tenancy agreement may include anything else the tenant and operator agree to, for example:
 - house rules;
 - limits on roommates or subletting; and
 - permission for the operator to enter to clean, make repairs, or check on the tenant's condition.

- ❑ The tenant's permission for the operator to enter to check on his/her condition, may be revoked at any time on written notice to the operator.

- ❑ Either the tenant or the operator may terminate the tenancy in accordance with the Residential Tenancy Act, 2006 and each has the rights and obligations set out in that Act and any other relevant legislation.

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- The tenant shall be made aware that he/she has the right to consult with someone about the tenancy agreement.

- Each tenant shall be given a residential care facility information package. A residential care facility information package tells the tenant:
 - what kind of rental units are available and how much each costs;
 - the kinds of care, services and meals that are available and how much each costs;
 - the lowest number of employees that must work in the facility at any one time;
 - the qualifications of the employees;
 - what optional services are available, and how much they cost;
 - whether there is a personal emergency response system such as a call bell, and how it works; and
 - whether or not complaints can be made to the operator and if they can be made then how to do so.
 - That complaints about the operation of the facility may be made by telephoning the City of Hamilton Public Health Services at 905-546-2063.

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PART V: Care Services

Section 37 - Care Services

The operator shall provide care services to each tenant in a facility in accordance with the Guidelines issued by the Medical Officer of Health.

- In Schedule 20, “care services” means advice, information, or supervision provided to tenants in the activities of daily living and may also include:
 - (i) periodic personal care, as required, such as the giving of medications, bathing assistance, assistance with feeding, incontinence care, dressing assistance, assistance with personal hygiene, and ambulatory assistance;
 - (ii) provision of recreational or social activities, housekeeping, laundry services, and assistance with transportation;
 - (iii) personal emergency response services, including assistance in evacuating under emergency conditions due to mental limitations and/or developmental handicaps and limitations of the tenants.
- A nurse inspector may review a tenant’s physical and mental health condition and care services provided to the tenant. This includes discussions with the operator, employees and/or the tenant in addition to an assessment of the tenant’s s. 49(2) file.
- A nurse inspector shall be consulted for suggestions for follow up with care if needed.
- Sufficient care services shall be provided to meet the care needs of a tenant, with consideration being given to input from the tenant .
- Enough appropriately trained employees shall be on duty to provide care services to tenants.

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- ❑ Recreational activities shall be provided for tenants with a list of activities posted for each tenant to see. Recreational activities may include a variety of planned activities such as movie nights, card or board games, crafts and offsite activities like swimming, picnics, walks, etc.

- ❑ Tenants shall be encouraged to take part in activities and a note shall be made on the tenant's file about any activities in which the tenant is involved in. If a tenant refuses to take part in any activities, a note shall be made on the tenant's including the reason why.

- ❑ A plan shall be in place to deal with tenant's physical or mental health emergencies and crises that occur in the facility.

- ❑ All employees shall know how to deal with physical or mental health emergencies and crises in the facility; for example, by calling 911, contacting the Crisis Outreach and Support Team (COAST) or reporting communicable diseases. The operator shall make sure all employees receive appropriate training with respect to the facility's emergency/crisis plan.

- ❑ Employees shall keep a daily written record of important information about a tenant to be passed on to other employees, such as a change in physical or mental health, a medication change, a tenant's absence from the facility, a referral to COAST, etc.

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Section 38 - Storage and Availability of Prescription Drugs

The operator shall make sure that all prescription drugs:

- (a) are kept in one or more locked drug cabinets, unless the drug requires refrigeration, or must be kept with the tenant for immediate use;***
- (b) are made available only:***
 - (i) to those tenants for whom they have been prescribed, as directed by a physician;***
 - (ii) in a unit-dose medication dispensing system as described in the Guidelines.***

- ❑ A safe medication system, developed in consultation with a tenant's pharmacist(s), shall be used ensuring a tenant receives his/her medication(s) as ordered by his/her physician(s). The operator or employee responsible for the medication shall know how the medication system works.
- ❑ All prescription medications must be made available in a unit-dose medication dispensing system. A unit-dose medication dispensing system allows each dose of medication to be available as a single dose only to the tenant for whom it is prescribed. A dosette box is not an acceptable unit-dose system.
- ❑ All prescription drugs shall be kept in one or more locked cabinets.
- ❑ Medications that need to be kept in a refrigerator - for example, insulin- shall be kept in a locked box in the refrigerator.
- ❑ Medications kept with the tenant for immediate use shall be kept where the tenant can easily reach them but away from other tenants.
- ❑ Employees shall be well-trained in giving medications safely and properly, what the medication is used for, and how the medication is to be stored. Pharmacists shall be consulted with as required for direction.
- ❑ All medications shall be made available to a tenant only under the direction of the his/her physician.

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- The operator or an employee shall watch to make sure that a tenant has taken his/her medication. If a tenant does not take his/her medication, a note shall be made in the tenant's file, or on a medication record sheet. The reason for the tenant not taking his/her medication should also be noted.

- The tenant's physician shall be notified if the tenant does not take his/her medication.

- A tenant may need medication by needle, for example, insulin. The operator shall make sure that a registered nurse determines that the operator or non-professional employee is allowed to be trained to give the insulin.

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Section 39 - Self-Medication

The operator shall allow self-medication by the tenants of a facility under specified conditions set forth in the Guidelines issued by the Medical Officer of Health.

- If a tenant asks to take, order, and/or store his/her own medications:
 1. A note shall be requested from the tenant's physician that says that the tenant is able to take his/her own medications. This note should be updated if there is a change in a tenant's physical or mental health affecting the tenant's ability to take his/her own medications.
 2. The tenant shall keep the medication in a locked box in his/her room. A tenant with a private room may choose not to keep his/her medications in a locked box, but they shall be kept where the tenant can easily reach them but away from other tenants. The tenant shall keep his/her room door locked at all times if not present in the room.
 3. The tenant's ability shall be monitored to ensure that the tenant is taking his/her medications.

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Section 40 – Controlled Substances Prescribed on an “as needed”/PRN Basis

If a tenant is prescribed a drug that is a controlled substance as defined in the Controlled Drugs and Substances Act (Canada) on an “as needed”/PRN basis and the operator has not completed a medication course as described in the Guidelines within the preceding twelve months, then they shall complete such a medication course no more than thirty days after the drug has been prescribed.

- ☐ If prescribed medications include controlled substances as defined in the Controlled Drugs and Substances Act (Canada), prescribed on an “as needed”/PRN basis the operator must complete a medication course.

- ☐ The medication course shall contain information such as: information about the Controlled Drugs and Substances Act, the addictive nature of narcotics, side effects of narcotics, any Inventory requirement for controlled drugs and substances, what to do in the event of missing narcotics, storage requirements, requirements for documentation and disposal of narcotics, record keeping, common narcotics and review of safe medication administration. The operator must maintain documentation of course completion.

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Section 41 - Nutrition

The operator shall ensure that the tenants of a facility are served daily sufficient food of good quality and adequate nutritional and caloric value as described in the Guidelines issued by the Medical Officer of Health.

- ❑ Three meals (breakfast, lunch, and dinner) shall be served to tenants daily.
- ❑ Snacks and fluids shall be available between meals and in the evening.
- ❑ The total amount of food served during meals and snacks shall provide each tenant with at least the minimum number of servings from each of the four food groups of Canada's Food Guide (Appendix "C").
- ❑ Meals and snacks shall provide an appropriate energy intake to maintain each tenant's weight within a healthy weight range.
- ❑ Menus shall be written, dated and posted in advance of the current week for tenants to see and kept on file for at least one month after being served. The total number of servings of each food group served daily shall be included.
- ❑ Changes to a meal shall be marked on the posted menu prior to the meal being served.
- ❑ Menus shall reflect the recommendations of Canada's Food Guide regarding serving sizes, the age appropriate number of Food Guide Servings per day from each food group, and how to make each Food Guide Serving count.

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- ❑ Tenants shall be consulted when menus are planned to ensure acceptability. Alternative healthy food choices should be made available. All food served should be culturally appropriate.
- ❑ The operator shall provide special diets and nutritional supplements upon direction of a tenant's physician or registered dietitian and menus and meals shall be adapted as required.
- ❑ Tenants requiring dietary guidelines/intervention - for example, special diets to address food allergies, significant weight loss, etc. - shall have access to a registered dietitian for nutrition counseling through Community Care Access Centre (CCAC), local hospital outpatient clinics or other resources.
- ❑ A copy of Canada's Food Guide shall be posted in the kitchen.
- ❑ Canada's Food Guide and additional nutrition and menu planning information are available from Public Health Services, Nutrition and Physical Activity Consumer Advice Line at (905) 546-3630.
- ❑ A facility shall have an adequate supply of perishable foods to meet the needs of the tenants for at least a 24-hour period and an adequate supply of non-perishable foods to meet the needs of the tenants for at least a three-day period.
- ❑ All food shall be stored in accordance to the requirements of Ontario Regulation 562 as amended by Ontario Regulation 586/99 under the Health Protection and Promotion Act. Additional information is available from Public Health Services, Health Protection Division at (905) 546-2063.
- ❑ The operator shall participate in an annual menu planning session offered by the Residential Care Facilities Education Committee.

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Section 42 – Infection Control

The operator shall ensure that all requirements for the control of infectious diseases that are set forth in the Guidelines issued by the Medical Officer of Health are complied with, including recommendations for tuberculosis screening, immunization programs, reporting requirements, and outbreak control measures.

TUBERCULOSIS SCREENING REQUIREMENTS

- ❑ **Regarding tuberculosis screening for employees and volunteers:**
 - All current employees/volunteers- current employees/volunteers that have not previously had a documented two-step Tuberculin skin test (TST) upon starting employment shall have this done. If an employee/volunteer has a documented previous positive TST, then he/she shall be referred to a physician.
 - For new employees/volunteers – each new employee/volunteer shall receive and provide documentation of a two-step TST or single-step TST (for individuals who have never had a TST before, a two-step TST is required, for those who have had a two-step previously, a single TST is required) within one month of starting employment. If an employee/volunteer has a documented previous positive TST, then he/she shall be referred to a physician.
 - The TST results are recorded in writing in millimetres of induration.
 - An employee/volunteer is referred to a physician for chest x-ray to rule out active disease if:
 1. The TST is positive (see Appendix “I”);
 2. The employee/volunteer has a previous documented positive TST; or
 3. The employee/volunteer has a history of TB disease.
 - Yearly skin testing is not necessary.
 - Testing thereafter shall occur as required by the Medical Officer of Health
 - for example, in the event of an active case of TB in the facility or increasing rates of TB in the community.
- ❑ **Regarding tuberculosis screening of tenants:**

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- Each tenant upon admission shall receive a TST. IF tenant has a documented positive TST, he/she is to be referred to a physician.
- The TST shall be a two-step or one-step test as indicated (see section above).
- The TST shall be given within two (2) weeks of admission unless a tenant is to reside in the RCF for a period less than two weeks.
- The tenant shall be referred to a physician to rule out active disease if:
 1. The TST is positive (see Appendix "I"),
 2. The tenant has a previous documented positive TST, or
 3. The tenant has a history of TB disease
- A TST is not needed for:
 1. Tenants with a documented TST within one year prior to admission.
 2. Tenants who move from place to place but have a documented TST within one year prior to admission.
- Yearly testing is not necessary.
 - Testing thereafter shall occur as required by the Medical Officer of Health (for example, in the event of an active case of TB in the facility or increasing rates of TB in the community).

Note: Please refer to Appendix "I" for additional TB information

❑ **Immunizations:**

- All employees and tenants should have an annual influenza vaccination.
- Tenants 65 years of age and over should strongly consider having a pneumococcal vaccination once only. If a tenant thinks that he/she may have already had a pneumococcal vaccination but there is no record thereof, it is recommended that the tenant be immunized again (once only) as long as at least two years have elapsed.
- All employees and tenants should be up to date regarding immunizations according to the Canadian Immunization schedule (for example, tetanus, diphtheria)

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□ **Reporting requirements and outbreak control measures, operators and employees shall:**

- Be familiar with the diseases that must be reported- see attached list (Appendix "D").
- Immediately report any suspected or diagnosed communicable diseases to Public Health Services, Infectious Disease Control Program, at (905)546-2063.

References:

1. Ministry of Health. (1998). Ontario Ministry of Health Tuberculosis Protocol
2. Health Canada. (2006). Canadian Immunization Guide, 7th Ed.

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Section 43 - Medical Care

Each tenant of a facility or his/her next-of-kin, or attorney for personal care, as the case may be, shall retain a physician to attend to the tenant.

Where the tenant, his/her next-of-kin, or attorney for personal care is unable to do so, the operator shall make arrangements for a physician to provide emergency medical care to the tenant.

- ❑ Each tenant shall have a physician.
- ❑ The physician's name and telephone number shall be placed in the tenant's section 49(2) file.
- ❑ The operator shall arrange for the physician to give emergency medical care if the tenant, next of kin, or legal representative is not able to do so. For immediate, life threatening situations, 911 shall be called. Calling a tenant's physician will cause unnecessary delay in the provision of emergency care.

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Section 44 – Medical Care (continued)

The operator shall allow a tenant's physician or a member of a regulated health professional who is providing care or treatment to a tenant to enter the facility at any reasonable time for the purpose of attending to the health of the tenant.

- ❑ A tenant's physician or a regulated health professional shall be allowed into a facility to give him/her health care.

- ❑ What is a "reasonable time" shall be interpreted in accordance with the importance of the health care to be given – the more important the health care, the more expansive the interpretation.

- ❑ The arrangements of a tenant's physician for "after hours" care shall be known and shall be used when the tenant's physician is not available.

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Section 45 - Additional Care

Wherever the tenant's physician, the operator, the Medical Officer of Health, or a member of a regulated health profession who is employed by a referring agency designated in the Guidelines, determines that a tenant requires additional care services for their special needs and the tenant, their next-of-kin, or attorney for personal care has not arranged for such additional care, the operator shall ensure that such additional care is made available to the tenant while the tenant continues to reside in the facility.

In ensuring that additional care services are provided, the operator shall:

- (a) consult with the tenant, their next-of-kin, attorney for personal care and/or a community worker, and prepare a plan which shall include a description of the health issue and the services being provided to address that health issue. The plan may include additional care services, such as additional personal care services and/or rehabilitative services;***
 - (b) ensure that additional personal care services are provided through a referral to a community care access centre or to a private community agency;***
 - (c) where the tenant requires rehabilitative services, support the tenant's rehabilitative goals in the facility and in the community, which may include assisting tenant with meal preparation, laundry, household duties and self-medication.***
- ❑ Extra care shall be given to the tenant if the physician, the operator, the Medical Officer of Health, or a regulated health professional employed by a referring agency is of the opinion that it is needed and the tenant, their next-of-kin, or attorney for personal care has not arranged for such additional care.
 - ❑ When a tenant has special needs, these shall be discussed with the tenant, the tenant's next of kin, and the tenant's community worker (social worker from a psychiatric agency, a nurse from CCAC) about what needs are to be included in the tenant's care plan to meet the special needs.
 - ❑ The tenant's care plan shall include a description of the health issue and the services being provided to address that health issue. The plan may include additional care services, such as additional personal care services and/or

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rehabilitative services. This includes the care provided by external care providers.

- ❑ Enough employees shall be on duty to provide additional care services arranged for by the operator and the employees shall be trained to provide these care services.
- ❑ If a tenant appears to need more care services than what the operator is allowed to give:
 1. The tenant's physician shall be requested to provide an updated assessment.
 2. The tenant, next of kin, or attorney for personal care, as the case may be, shall be consulted about contacting the Community Care Access Center (CCAC) for extra help with care and/or to have an assessment for placement into another type of facility.
 3. The tenancy agreement shall be amended to include any additional care services.
- ❑ In Schedule 20, "rehabilitative services" means services for an individual with a physical, mental, or developmental handicap, and includes:
 - (a) homemaker services;
 - (b) day care;
 - (c) training and rehabilitation;
 - (d) casework and counseling; and
 - (e) training in life skills.
- ❑ Where rehabilitative services from part of a tenant's care plan, the plan shall include goals for rehabilitation and the tenant shall be helped to meet these goals – for example, helped to get meals ready, do laundry, carry out household chores or taking his/her medication(s).

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Sections 46 and 48 - Tenant Moving Out of Residential Care Facility

The operator or the employee designated under paragraph 17(2)(a), shall inform the tenant, as soon as possible, of the provisions of section 148 of the Residential Tenancies Act, 2006 and may arrange for the transfer of the tenant:

- (a) to a long term care facility or other appropriate living arrangement, with the agreement of the tenant, where an operator is informed by:***
 - (i) a community care access centre that a tenant of a facility is eligible for admission to a long term care facility;***
 - (ii) the tenant's physician or the Medical Officer of Health, that the tenant no longer requires the level of care services which the facility is authorized to provide; or***
 - (iii) the tenant's physician or the Medical Officer of Health, that the tenant requires a level of care services that the operator is not authorized to provide; or***
- (b) to a long term care facility, with the agreement of the tenant, where a tenant requires placement in a locked unit for the protection of themselves or others.***

Where a tenant is transferred from a residential care facility to a long term care facility, hospital or to another facility licensed under this By-law, the operator shall request the tenant, or, if they are unable to act, their next-of-kin or attorney for personal care, to complete an authorization in Form 1 for the release of information pertaining to the tenant to the long term care facility, hospital or other licensed residential care facility.

Where a tenant is transferred from a residential care facility to another facility licensed under this By-law, or to a long-term care home or hospital, the operator shall complete a transfer in Form 2.

- ☐ A tenant may no longer need to live in a residential care facility because he/she can live on his/her own. Alternatively, because of changes in physical or mental health, a tenant may need to go to a facility that provides a higher level of care such as a nursing home.
- ☐ If the tenant needs to move to a facility that provides a higher level of care, the tenant, the next of kin or attorney for personal care, as the case may be, shall be consulted regarding a referral to CCAC.

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- ❑ If a tenant who needs to move is not willing to, under the Residential Tenancy Act, 2006 the operator may apply for an order to terminate the tenancy agreement from the Landlord and Tenant Board. The operator would have to prove to the Board that other appropriate accommodation is available for the tenant, and that the operator is not able to meet the tenant's care needs in the facility, even with additional care services.
- ❑ When an operator is told that a tenant will be moving out of the facility, the operator shall, as soon as possible, to the tenant about the provisions of Residential Tenancy Act, 2006. The operator may arrange for the move if the tenant agrees.
- ❑ Where a tenant is transferred from a residential care facility to a long term care facility or to another facility licenced under this By-law, the tenant, or the next of kin or attorney for personal care, as the case may be, shall sign a "Release of Information Form" (Form 1, Appendix "H").
- ❑ Where a tenant is transferred from a residential care facility to another facility licensed under this By-law, or to a hospital, or a long-term care home, a "Transfer Sheet" (Form 2, Appendix "G") shall be completed. the operator shall complete a transfer in Form 2.
- ❑ Forms 1 and 2 should be used when a tenant is sent to a Long Term Care Facility, to another Residential Care Facility, or to a hospital.
- ❑ Completed Forms 1 and 2 shall be placed in a tenant's s. 49(2) file.

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PART VI: RECORDS AND REPORTS

Section 49 - Alphabetical List and Tenant's File;

The operator shall maintain an up-to-date, alphabetical list of the current tenants of a facility which includes the name, sex, date of birth, age and date of admission of each tenant.

The operator shall maintain a separate file for each tenant, which contains the following information:

- (a) sex, date of birth, age, date of admission, and date of discharge or death;***
- (b) name, address, and telephone number of next-of-kin;***
- (c) name and telephone number of the tenant's attorney for personal care, if any;***
- (d) the name and telephone number of the tenant's physicians;***
- (e) completed assessment;***
- (f) the name, address and telephone number of any community agency which is providing support to the tenant;***
- (g) tuberculin or chest x-ray testing results, and the dates thereof;***
- (h) a brief medical history of the tenant in respect of the care services provided by the operator under the tenancy agreement (section 36) or any additional care services made available by the operator (subsection 45(1)) from the date of their admission, including medication information, laboratory results, physicians' orders as available and staff notes;***
- (i) a residential care facility information package; and***
- (j) particulars of each accident suffered by the tenant or death of a tenant while in the facility;***
- (k) Forms 1, 2 and 3 (where used).***

- ☐ Each tenant shall be informed that his/her records will be reviewed by a nurse inspector employed by the City of Hamilton's Public Health Services Department.
- ☐ Any known allergies suffered by the tenant should be clearly written on a tenant's file.
- ☐ Written results and the date of TB tests/chest x-rays should be placed in a tenant's file.

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Section 50 - Occurrence Report (Form 3)

The operator shall make a record in Form 3 of every occurrence with respect to a tenant of assault, injury or of death that has been reported to coroner, and shall place the completed Form 3 in the tenant's file and keep it available for inspection by the Medical Officer of Health.

- A "Report of Occurrence of Assault or Injury" (Form 3, Appendix "H") shall be completed for any assault or injury to a tenant or death or a tenant reported to the coroner that happens on the facility property.

- For an assault between or amongst tenants, a Form 3 (Appendix "H") shall be completed for each for the tenant, including assaulting and assaulted tenants.

- A Form 3 (Appendix "H") shall be completed for any death resulting from an accident or unknown reasons, or due to a contagious disease that has been reported to the Office of the Coroner.

- Completed Form 3s shall be placed in a tenant's s. 49(2) file.

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APPENDIX "A"

**ADDITIONAL GUIDELINES FOR PREPARING
A "SINGLE FACILITY INCIDENT PLAN"**

- ❑ A single facility incident plan shall be a plan like the fire protocol that the operator follows for a fire in the facility.
- ❑ A copy of an up-to-date premises plan shall be included with the single facility incident plan.
- ❑ All operators and employees shall be familiar with the details of the single facility incident plan.
- ❑ Alternative housing and transportation for tenants to such alternative housing shall be arranged ahead of time by the operator and/or the person responsible for the operation of the facility in case tenants need to be removed. The operator and/or person in charge may call the Public Health Services Department at (905) 546-2063 for available supports.
- ❑ All paper records that are important for the active care of the tenant shall be easy to move in the case of an evacuation. Examples of information that should be kept on paper record are: name of tenant, date of birth, personal physician, brief medical history, allergies, list of current medications, next of kin/power of attorney for personal care, and special physical and health needs. If a facility keeps electronic records, they should be copied on an ongoing basis and stored away from the facility in either electronic or paper copy in order to facilitate access..
- ❑ Emergency packs containing items for person care, such as a toothbrush, deodorant, a comb, soap, etc., shall be prepared ahead of time for each tenant and removed with the tenants.

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- ❑ When the operator and/or the person responsible for the operation of the facility becomes aware that an evacuation is needed, he/she shall make sure that all employees and tenants know that they must leave.

- ❑ Operators and employees shall know if tenants need extra help with special needs during their removal from the facility.

- ❑ All employees on duty shall help tenants to leave the facility, providing extra help with special needs as required.

- ❑ Next of kin shall be informed about the removal of a tenant from the facility and the name and address of the location to which the tenant has been moved.

- ❑ The operator and/or the person responsible for the operation of the facility shall call the Public Health Services Department, at (905) 546-2063 during business hours and at (905) 546-CITY ext. 2489 after business hours, to report any single facility incident.

- ❑ After a single facility incident, the Health Protection Division of the Public Health Services Department (public health inspectors) will assess the facility to determine if it is safe for the tenants to return.

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APPENDIX “B”: Assessment Form

Name of Tenant _____

Address _____ Phone _____

_____ Date of Birth _____

Allergies _____ Language Spoken _____

Personal Physician _____ Telephone _____

Brief Medical History:

Diagnoses:

Medications Currently Prescribed:

Significant recent mental or physical changes/incidents/hospitalizations:

TB skin test (must be completed within 14 days of admission)

Date 1st _____ 2nd _____ Results: 1st _____ 2nd _____

If TB test positive, result of chest x-ray and doctor's assessment:

Date of Chest x-ray : _____

Requires Additional Care: Yes _____ No _____

If yes Please Describe:

Tenant is able to self-medicate Yes _____ No _____

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Please complete the following with respect to this client:

	Yes	No
Does the tenant wander? If YES the client is not appropriate for admission into an RCF		
Does the client fully ambulate or independently ambulate with aids? If NO the client is not appropriate for admission into an RCF.		
Does the client have bladder incontinence? If YES the client must be able to manage incontinence independently or with PERIODIC ASSISTANCE otherwise is inappropriate for admission into an RCF.		
Does the client have bowel incontinence? If YES the client must be able to manage incontinence independently or with PERIODIC ASSISTANCE otherwise is inappropriate for admission into an RCF.		
Is the client able to eat independently with PERIODIC assistance? If NO client is not appropriate for admission into an RCF.		
Is the client able to maintain personal hygiene independently with PERIODIC assistance? If NO client is not appropriate for admission into an RCF.		
Is the client able to dress independently or with PERIODIC assistance? If NO client is not appropriate for admission into an RCF.		
Does the client <u>currently</u> experience episodes of aggression? If YES client is not appropriate for admission into an RCF.		

Date Completed _____

Physician/Health care Professional's name _____

Signature _____

RCF Operator:

If the healthcare provider who completed this form selected any options above that indicate the client is inappropriate for placement in a residential care facility you are not authorized to admit the client to your facility.

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APPENDIX “C”

CANADA’S FOOD GUIDE (obtain directly from Public Health Services staff)

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APPENDIX “D”

REPORTABLE DISEASES (obtain directly from Public Health Services Staff)

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APPENDIX “F”

FORM 1: RELEASE OF INFORMATION FORM

**CITY OF HAMILTON
CITY OF HAMILTON LICENSING CODE, 2001
Schedule 20**

**RESIDENTIAL CARE FACILITIES
FORM 1**

AUTHORIZATION FOR RELEASE OF INFORMATION

I, _____,
(print name of tenant, or next-of-kin, or attorney for personal care)

give permission to

(print name of residential care facility or operator))

to release information concerning the tenant named below, including medical records and other personal information, which is in the custody of the above-named residential care facility or of the operator of such facility, to:

(print name of long term care facility or other licensed residential care facility to which the tenant is being transferred)

I understand that this information is being released for the purpose of enabling _____

_____ to obtain

(print name of tenant)

admission to the long term care facility or other licensed residential care facility indicated above.

(Signature of Witness)

(Signature of tenant, next-of-kin, or Attorney for
Personal Care)

(Date)

(State relationship to Tenant, if next-of-kin)

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CITY OF HAMILTON
CITY OF HAMILTON LICENSING CODE, 2001
Schedule 20

RESIDENTIAL CARE FACILITIES
FORM 1

AUTHORIZATION FOR RELEASE OF INFORMATION

INSTRUCTIONAL POLICY & PROCEDURES

Purpose

The purpose of the authorization for release of information is to ensure that the tenant is in agreement to the release of his/her medical records and/or information in the event of a transfer. This information would be provided to another home care operator and/or other health care facility in liaison with the appropriate Health and Social Service Agencies.

A Form 14 is the designated consistent form for the release of records from a psychiatric facility as provided in the regulations of the Mental Health Act and would pertain to any residents whose primary diagnosis is psychiatric.

Completion Procedure

- a) The operator/employee must complete the form and ensure that among the information to be included, the identity of the facility in possession of the clinical records and also to whom and/or what facility the information is made available.
- b) The operator/employee will advise the tenant of the purpose of the form and request his/her signature.
- c) In the event that another individual (i.e., substitute decision-maker or public guardian or trustee) signs on behalf of the tenant, he/she must do so in accordance with the wishes of the tenant.
- d) The witness who signs must not be the owner/operator of the facility - must be witnessed by another person (i.e., guardian, legal representatives, or employee).

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APPENDIX “G”

TRANSFER SHEET

**CITY OF HAMILTON
CITY OF HAMILTON LICENSING CODE, 2001
Schedule 20**

**RESIDENTIAL CARE FACILITIES
Form 2**

TRANSFER SHEET

RESIDENTIAL CARE FACILITY INFORMATION:

Name: _____

Address: _____

Telephone: _____

TENANT INFORMATION:

Name: _____

Health Card Number: _____

Family Dr.: _____ Telephone: _____

Specialist: _____ Telephone: _____

BRIEF MEDICAL HISTORY:

NEXT OF KIN:

Name: _____

Relationship: _____

Address: _____

Telephone: _____

COMMUNITY WORKER:

Name: _____

Agency: _____ Telephone# _____

TRANSFER INFORMATION:

Transfer To: _____ Transfer From: _____

Date & Time: _____ Date & Time: _____

Reason for Transfer: _____

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Physical Functioning: Independent ☐ Requires assistance ☐

Specify: _____

Mental Health:

Oriented to person, place, time: ____yes ____no Specify:

Confusion: never sometimes frequently

Aggression/Agitation: never ☐ sometimes ☐ frequently ☐

Diet ☐

Date and result of most recent TB skin test or chest x-ray: ☐

TB Test Date: 1st 2nd TB test result: 1st 2nd

Chest X-ray Date: _____ Chest X-ray Result: _____

ADDITIONAL INFORMATION: (Pertinent to follow-up care of tenant e.g., medication changes, lab tests, diagnoses, follow-up plan, etc.)

Medication List attached: Yes _____ No _____

ALLERGIES:

SIGNATURE OF OPERATOR/MANAGER: _____

NOTES:

1. Sending facility to keep original form.
2. Receiving facility to keep copy of form.

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APPENDIX “H”

REPORT OF OCCURRENCE OF ASSAULT OR INJURY OR DEATH

**CITY OF HAMILTON
CITY OF HAMILTON LICENSING CODE, 2001
Schedule 20**

**RESIDENTIAL CARE FACILITIES
Form 3**

REPORT OF OCCURRENCE OF ASSAULT , INJURY or DEATH

1. Name of Residential Care Facility: _____
2. Address: _____
3. Date of Occurrence: _____
4. Time of Occurrence: _____ a.m. _____ p.m.
5. Name of tenant: _____
Date of Birth (yyyy/mm/dd): _____ Male _____ Female _____
Date of Admission: _____
6. Name of Person/s who discovered or observed occurrence: _____
7. Brief description of occurrence: _____

8. Type of injury sustained, if any: _____

9. Was first aid given? yes _____ no _____ describe _____

10. Was 911 called? yes _____ no _____ Time 911 called _____
11. Was tenant sent to hospital? yes _____ no _____
12. Name of hospital: _____
13. Was physician notified? yes _____ no _____
14. Time when physician notified: _____ a.m. _____ p.m.

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15. Name of physician: _____

16. Physician Notified By: _____

For Physician Use Only

17. Attending physician's name: _____

Comments: _____

18. Signature of attending physician: _____

19. Were relatives or friends of tenant notified? yes _____ no _____

20. What action have you taken to prevent this occurrence from happening again? _____

If tenant died:

21. Was coroner notified? yes _____ no _____

22. Date coroner notified _____

23. Time coroner notified _____ a.m. _____ p.m.

24. Signature of Person Completing Form: _____

25. Signature of Operator/Manager: _____

NOTES:

1. Place original form in Tenant's File.
2. Give copy to Physician.

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APPENDIX “I”

ADDITIONAL TB INFORMATION

- ❑ Tuberculosis (TB) screening is a method used to identify people who may have TB infection and/or disease. At present, the TB skin test (TST) is the most reliable screening tool. A two-step TST is given to people who have never had a TST in order to obtain an accurate baseline reading. A two-step TST means giving one TST followed by another TST 7 to 28 days later. Future TST done following the documented two-step TST should only be a single TST. If a person has a documented previous positive result then no TST is needed; these individuals must be assessed by a physician.

- ❑ Positive TST:

TST Reaction Size (mm induration)	Situation in Which Reaction is Considered Positive
0-4	HIV infection with immune suppression AND the expected likelihood of TB infection is high (e.g. patient is from a population with a high prevalence of TB infection, is a close contact of an active contagious case, or has an abnormal chest x-ray)
5-9	HIV infection Close contact of active contagious case Children suspected of having TB disease Abnormal chest x-ray with fibronodular disease Other immune suppression: TNF-alpha inhibitors, chemotherapy
≥10	All others
Taken from Canadian TB Standards, 6 th Edition	

- ❑ A chest x-ray should not be used as a substitute for a TST. Research shows that a chest x-ray is not a useful method of detecting tuberculosis infection. Chest x-rays do not guarantee early identification of tuberculosis. In some cases, an infected individual will develop a cough and produce infectious sputum before infection is seen on an x-ray.
- ❑ **Why is the TB skin test needed?** Doing a skin test is important for two reasons: it provides a baseline, which is needed to guide post-exposure case management; and, it helps to make sure that new employees/tenants do not put colleagues or tenants at risk in the event that he/she has TB disease.