




CITY OF HAMILTON
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Licensing and By-law Services Division

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| TO: | Chair and Members Planning Committee |
| COMMITTEE DATE: | August 18, 2020 |
| SUBJECT/REPORT NO: | Amendments to the General Provisions of Business Licensing By-law 07-170 (PED 20137) (City Wide) |
| WARD(S) AFFECTED: | City Wide |
| PREPARED BY: | Monica Ciriello (905) 546-2424 Ext. 5809 |
| SUBMITTED BY: | Ken Leendertse Director, Licensing and By-law Services Planning and Economic Development Department |
| SIGNATURE: |  |

RECOMMENDATION

- (a) That the amending by-law attached as Appendix “A” to Report PED20137 which amends the General Provisions of Licensing By-law 07-170, and which has been prepared in a form satisfactory to the City Solicitor, be enacted effective immediately by Council.

EXECUTIVE SUMMARY

As part of Licensing and Bylaw Services’ continuous improvement efforts, staff review enforcement activities and update by-laws to address specific municipal needs. The amendments to the General Provisions of the Licensing By-law 07-170 proposed in this report are based directly on authorities granted to the City under the *Municipal Act, 2001*, S.O. 2001, c.25 (“*Municipal Act, 2001*”) and will provide the City, through the Director of Licensing, greater flexibility to promptly address situations where a licensee is involved in activity that presents a danger to the health or safety of a person or property.

The proposed amendments are consistent with the ‘progressive enforcement’ model and will permit the City/Director to impose additional conditions on, and/or issue a temporary suspension (up to 14 days) of, a business licence in response to undesirable activity. These amendments also permit the licensee to appeal the additional conditions

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OUR Mission: To provide high quality cost conscious public services that contribute to a healthy, safe and prosperous community, in a sustainable manner.

OUR Culture: Collective Ownership, Steadfast Integrity, Courageous Change, Sensational Service, Engaged Empowered Employees.

to a Hearing Officer and then to the Licensing Tribunal if they disagree with those conditions.

Alternatives for Consideration – Page 3

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: N/A

Staffing: N/A

Legal: N/A

HISTORICAL BACKGROUND

The *Municipal Act, 2001*, provides a municipality with the authority to regulate, including license, any business, wholly or partly, carried out within its jurisdiction. The justifications for licensing certain types of businesses generally relate to the health and safety, consumer protection and nuisance control. Furthermore, the *Municipal Act, 2001* permits the imposition of conditions on licence holders and permits the temporary suspension of licences where the continuation of the business would pose an immediate danger to the health or safety of any person or to any property.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

N/A

RELEVANT CONSULTATION

Legal Services were consulted in the preparation of the Report and Bylaw.

ANALYSIS AND RATIONALE FOR RECOMMENDATION(S)

Licensing and Bylaw Services' staff constantly engage in continuous improvement reviews, to update by-laws that address specific municipal and enforcement needs.

Section 151(1) of the *Municipal Act, 2001* authorizes the City to impose conditions as a requirement of obtaining, continuing to hold or renewing a licence. Furthermore, section 151(2) authorizes the City for the time and on the conditions as it considers appropriate, without a formal hearing to suspend a licence if it is satisfied that the continuation of the business poses an immediate danger to the health or safety of any person or to any property.

The General Provisions of the Licensing By-law as currently drafted is limited with regards to the Director's authority to impose conditions and is silent regarding temporary suspensions of business licences. In reviewing best practices of other municipalities, when the Director has such authority it provides further enforcement tools to obtain compliance.

General Provision amendments will allow the Director the discretion to impose terms and conditions on any licence at the time of issuance, at renewal or any time during the licensing period – this could include; stipulating the hours of operation, the maximum of persons permitted at the establishment and the conduct of outdoor patio operations. These conditions would be subject to appeal – first by a Hearing Officer and then to the Licensing Tribunal if necessary. Furthermore, it will allow for the temporary suspensions of a license, without a hearing, for a maximum period of 14 days. The Director may reinstate the licence before 14 days if the matter has been corrected to the satisfaction of the Director.

These amendments will allow for additional tools in progressive enforcement. Before the Director imposes any additional conditions on a licence, notice shall be given to the applicant or the licensee advising, the grounds for the conditions, reasonable particulars of the conditions; and that the applicant or licensee is entitled to a hearing before a Hearing Officer. A Hearing Officer can conduct a hearing remotely; over the phone or over email which will allow matters to be addressed while in a pandemic. A Hearing Officer's decision may be appealed to the Licensing Tribunal.

The amendments provide further obligations on licensees regarding the continuation of business activity, such as:

- Not permitting shouting, noise or disturbances on, in or in connection with their business which is unnecessary, unreasonable or contrary to any other by-law;
- Not permitting any obstruction on any highway, sidewalk or public place without the prior approval of the Director of Licensing; and
- Not permitting any expansion(s) or addition(s) in connection with the business without the prior approval of the Director of Licensing.

These amendments will ensure that Licensing and Bylaw can ensure compliance, while balancing the City's 'Open for Business' initiative.

ALTERNATIVES FOR CONSIDERATION

Council may decide that progressive enforcement tools currently available under the Licensing Bylaw are sufficient and that some or all of the additional tools proposed in this Report are not required. However, staff believe that these amendments will provide the City, through the Director of Licensing, greater flexibility to promptly address

**SUBJECT: Amendments to the General Provisions of Business Licensing By-law
07-170 (PED 20137) (City Wide) - Page 4 of 4**

undesirable activities while maintaining a licensee's ability to challenge any additional restrictions imposed by the City/Director.

ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN

Our People and Performance

Hamiltonians have a high level of trust and confidence in their City government.

APPENDICES AND SCHEDULES ATTACHED

Appendix "A": Amending Business Licensing By-law 07-170