

Authority: Item 4, Planning Committee
Report 20-008 (PED20137)
CM: August 21, 2020
Ward: City Wide

Bill No. 180

CITY OF HAMILTON

BY-LAW NO. 20-

**A By-law to Amend By-law 07-170 being a By-law to License and Regulate
Various Businesses**

WHEREAS section 151 (1) of the *Municipal Act, 2001*, S.O. 2001, c.25 (“*Municipal Act, 2001*”) authorizes a municipality to impose conditions as a requirement of obtaining, continuing to hold or renewing a licence:

AND WHEREAS section 151 (2) of the *Municipal Act, 2001* authorizes a municipality, for the time and on the conditions as it considers appropriate, without a 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;

AND WHEREAS Council deems it to be an immediate danger to the health and safety of any person or to any property when a business contravenes any law, including any municipal by-law or in any situation itemized in this By-law;

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

1. The amendments in this By-law include any necessary grammatical, numbering and letter changes.
2. That By-law 07-170 be amended by repealing the definition of “Director of Licensing” and replacing it with the following definition in the General Provisions:

“**Director**” or “**Director of Licensing**” means the Director of Licensing and By-law Services for the City, or their designate;

3. That By-law 07-170 be amended by adding the following definition in the General Provisions:

“**Hearing Officer**” means a person from time to time appointed by Council pursuant to the City’s Administrative Penalty By-law;

4. That By-law 07-170 be amended to add a new section 12a immediately after subsection 12 (2) (b) to read:

License on Terms and Conditions

12a (1) Notwithstanding any other provision of this By-law, the Director may impose terms and conditions as they believe reasonable in the

circumstances on any licence at issuance, at renewal, or at any time during the licence period, which may include, but are not limited to conditions stipulating: the hours of operation; the maximum number of persons permitted to attend at the premises; the conduct of outdoor patio operations other than those set out in this By-law; payment of outstanding fines; or that the licensee shall have employees in attendance at the premises during hours of operation to ensure compliance with this By-law and the conditions on the licence.

(2) It shall be a condition of every licence that the licensee shall comply with all provisions of this By-law, other by-laws and all provincial and federal legislation, as applicable.

(3) The licensee shall:

- (a) ensure compliance with this By-law by every other person involved in carrying out the business;
- (b) at all times maintain and keep clean, safe, in good condition and repair the place or premises for which a licence has been issued under this By-law;
- (c) not cause, tolerate or permit shouting, noise or disturbance on, in or in connection with the place or premises for which a licence was issued, which is unnecessary, unreasonable or contrary to any by-law prohibiting the same, and if such shouting, noise or other disturbance occurs, the licensee shall at once take immediate steps to cause the shouting, noise or other disturbance to be abated;
- (d) not cause, tolerate or permit any profane, offensive or abusive language in connection with any place or premises for which the licence was issued;
- (e) not cause, tolerate or permit any obstruction on any highway, sidewalk, lane or public place in front of or adjoining the place or premises for which the licence was issued, unless approved by the Director; and
- (f) not cause, tolerate or permit any expansion(s) or addition(s) in connection with the place or premises for which a licence was issued without first obtaining the approval of the Director.

(4) Before the Director imposes any further conditions on a licence, the applicant or licensee shall be advised orally which additional conditions the Director proposes to add to the licence and they shall be given an opportunity to respond orally. The Director may then immediately impose additional conditions on the licence subsequent to which the Director shall provide written notice to the applicant or the licensee advising:

- (a) the grounds for the conditions;
- (b) reasonable particulars of the conditions; and
- (c) that the applicant or licensee is entitled to a hearing before a Hearing Officer.

(5) Where an applicant or licensee is dissatisfied with any condition imposed by the Director, the applicant or licensee may request a review by the Hearing Officer in accordance with this section 12a and in accordance with the procedures and fees outlined in the City of Hamilton's Administrative Penalties By-law, with necessary modifications.

- (a) A person may appeal the Director's conditions by submitting a written request to the Director no later than fifteen (15) days after the date on which the Director's decision is given to them. A person may not request that a Hearing Officer extend the time to appeal after the fifteen (15) days, at which time the Director's decision is final and not subject to review.
- (b) The person shall be given no fewer than fifteen (15) days' notice of the date, time and place of the hearing of the review request under this subsection.
- (c) The Hearing Officer shall not make a determination with respect to a review request under this By-law unless the Hearing Officer has given each of the applicant or licensee and the Director an opportunity to be heard.
- (d) The Hearing Officer shall give the written decision to the applicant or licensee at the conclusion of the hearing and may remove the conditions, affirm the Director's conditions or impose different conditions that the Hearing Officer sees fit as a condition of obtaining, continuing to hold or renewing the licence.
- (e) If the applicant or licensee is dissatisfied with the final decision of the Hearing Officer, the licence shall be deemed revoked or failed to be issued pursuant to section 13 and the applicant or licensee shall be entitled to a hearing before the Licensing Tribunal, pursuant to section 14.
- (f) A request by an applicant or licensee 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 written decision of the Hearing Officer. The applicant or licensee shall also include the grounds for their request.

5. That By-law 07-170 be amended to add a new section 18a immediately after subsection 18 (2) (b) to read:

Temporary Suspensions without a Hearing

- 18a (1) Notwithstanding the above, a licence issued under the authority of this By-law may be temporarily suspended upon such grounds and in accordance with such procedural provisions as are set out in this section 18a.
- (2) Temporary suspensions of a licence may be for a maximum period of fourteen (14) days. If the violation has been corrected to the satisfaction of the Director prior to the expiry of the suspension, the licence may be reinstated.
- (3) Temporary suspensions may be initiated by the Director in any situation that has resulted, or may reasonably be expected to result, in a danger to health or safety of persons or property, and without limiting the generality of the foregoing, these situations may include:
- (a) where the licensee (which includes, for the purposes of this By-law, any of its owners, operators, officers, directors, employees, sub-contractors, agents or representatives) has breached any law including any City by-law;
 - (b) where the licensee has done anything that is in any way adverse to the public interest;
 - (c) where a motor vehicle is deemed to be mechanically unsafe, including but not limited to body damage with sharp edges, holes in the floor boards, unserviceable tires, doors not closing properly, wire protruding from the seat or any other mechanical defect that would render the motor vehicle unsafe;
 - (d) where an inspection has been performed on a motor vehicle for transfer of a licence and the licensee fails to effect the transfer, the licence shall be suspended should the operator carry on business with the replacement vehicle;
 - (e) where a leasing agreement has expired and the lessee has failed to renew it, the licence may be suspended if the licensee continues to work while the licensing agreement is expired, and the licensee does not have the authority to remain on the premises;
 - (f) where a licensee's liability insurance has expired and he or she continues to carry on business for which the licence was issued, the licence shall be suspended; or
 - (g) any other situation or circumstance that constitutes, in the discretion of the Director, a danger to health or safety.

- (4) Prior to suspending a licence, the Director shall provide the licensee with the reasons for the suspension either orally or in writing and an opportunity to respond to them.
- (5) The Licensing Tribunal will be advised on a quarterly basis of all suspension actions initiated summarily.
- (6) The suspension of a licence pursuant to this section is lifted after the expiration of two (2) weeks from the date of suspension or at the discretion of the Director any time prior to the expiration.
- (7) Where a licence has been suspended or revoked, no person shall refuse to deliver the licence to the Director or shall in any way prevent or hinder the Director from receiving or taking the licence.
- (8) No licensee shall operate or carry on the business for which the licence was issued while the licence is under suspension.

6. That in all other respects, By-law 07-170 is confirmed.

7. That the provisions of this By-law shall become effective on August 20, 2020.

PASSED this 21st day of August , 2020.

F. Eisenberger
Mayor

A. Holland
City Clerk