



Hamilton

**REPORT 11-001
HAMILTON LICENSING TRIBUNAL**

9:30 a.m.

**Thursday, January 20, 2011
Room 264, 2nd Floor
Hamilton City Hall
71 Main Street West, Hamilton**

Present: Councillors T. Whitehead (Chair), B. Clark, C. Collins, S. Duvall and R. Pasuta

Also Present: Vince Ormond, Manager, Licensing & Permits
Justyna Hidalgo, Solicitor
Karen Kelly, Senior Solicitor
Lisa Pasternak, Senior Solicitor
Stephanie Paparella, Legislative Assistant, Office of the City Clerk

Other Attendees: Sajjad Haider, Appellant (Item 4.1)
Kaushaukumar Kanjibhai Patel, Appellant (Item 5.1)
Ahmed Masheh, Appellant (Item 5.2)

City Witnesses: Catherine Preete, former Public Health Inspector, City of Hamilton (Item 4.1)
David King, Public Health Inspector, City of Hamilton (Item 4.1)
Sergeant Myra James, Hamilton Police Service (Item 5.1)

Note: Councillor B. Clark was not able to be present for Item 4.2, and was only partially present for Item 4.1; therefore, he did not participate in the deliberations or decisions of the Tribunal, with respect to these two matters. Councillor Clark was in full attendance for the balance of the agenda.

**THE HAMILTON LICENSING TRIBUNAL PRESENTS REPORT 11-001 AND
RESPECTFULLY RECOMMENDS:**

1. APPOINTMENT OF VICE CHAIR (Item A)

That Councillor C. Collins be appointed as the Vice Chair of the Hamilton Licensing Tribunal.

2. Show Cause Hearing: Mr. Sajjad Haider, respecting the Eating Establishment – Lunch Counter Licence for Roma Pizza and Wings, located at 108 York Blvd., Hamilton, Ontario (Item 4.1)

That, in the interest of public health and safety, the Eating Establishment – Lunch Counter Licence for Roma Pizza and Wings, located at 108 York Blvd., Hamilton, Ontario, be revoked.

3. Appeal Hearing: Ms. Beverly Lynch-Sealy, respecting the Renewal Application for a Residential Care Facility Establishment Licence for Still Waters Second Level Lodging Home, located at 182 Cannon Street West, Hamilton, Ontario (Item 4.2)

That the appeal hearing request, submitted by Beverly Lynch-Sealy, respecting the renewal application for a Residential Care Facility Establishment Licence for Still Waters Second Level Lodging Home, located at 182 Cannon Street West, Hamilton, Ontario, be dismissed, for the following reasons:

- (i) The property at 182 Cannon Street West, Hamilton, Ontario has been sold, and is currently being used as a single family dwelling; and,
- (ii) The matter is moot, as the building in question has been sold and leased to another party; therefore, the building is no longer available for Ms. Lynch-Sealy's use.

4. Appeal Hearing: Mr. Ahmad Masheh, respecting the Refusal of Mr. Masheh's Application for a Taxi Cab Driver Licence (Item 5.2)

That the application for a Taxi Cab Driver Licence, to be submitted by Mr. Ahmad Masheh, be accepted and a Licence be issued, provided that Mr. Masheh satisfies all necessary requirements, as set out in the Licensing By-law 07-170, as amended, with the following conditions:

- (i) That Mr. Ahmad Masheh be required to submit a current Ministry of Transportation driver abstract to the Issuer of Licences at the three (3) month and six (6) month period, for a one year period from the date of issuance of his Taxi Cab Driver Licence; and,

- (ii) That Mr. Ahmad Masheh be required to submit a current Police Security Records Check at the three (3) month and six (6) month period, for a one year period from the date of issuance of his Taxi Cab Driver Licence,

For the following reasons:

- (i) That Mr. Ahmad Masheh was in full agreement with the Statement of Facts and the exhibits provided during the hearing.

FOR THE INFORMATION OF THE TRIBUNAL:

(a) CHANGES TO THE AGENDA (Item 1)

The Tribunal Clerk advised of the following changes to the agenda:

- (i) The Clerk requested, on behalf of the City's Legal Counsel, that Item 4.2 respecting the appeal hearing for Ms. Beverly Lynch-Sealy, respecting the Renewal Application for a Residential Care Facility Establishment Licence for Still Waters Second Level Lodging Home, located at 182 Cannon Street West, Hamilton, Ontario, be moved up on the agenda to be heard before Item 4.1. The reason for this request was to permit the alternate legal counsel required for this hearing to address this matter and to be excused from the following proceedings.
- (ii) The Clerk requested, on behalf of the City's Legal Counsel, that Item 5.2 respecting the appeal hearing for Mr. Ahmad Masheh, respecting the Refusal of Mr. Masheh's application for a Taxi Cab Driver Licence, be moved up on the agenda, as there was an agreed upon Statement of Facts between the City and the Appellant for this hearing, which would permit the proceedings to move more quickly than Item 5.1; allowing the appellant for Item 5.2 to be excused.

The Agenda for the January 20, 2011 meeting of the Hamilton Licensing Tribunal was approved, as amended.

(b) DECLARATIONS OF INTEREST (Item 2)

There were no declarations of interest.

(c) APPROVAL OF MINUTES OF PREVIOUS MEETING (Item 3)**(i) December 9, 2010 (Item 3.1)**

The Minutes of the December 9, 2010, meeting of the Hamilton Licensing Tribunal were approved, as presented.

(d) Show Cause Hearing: Mr. Sajjad Haider, respecting the Eating Establishment – Lunch Counter Licence for Roma Pizza and Wings, located at 108 York Blvd., Hamilton, Ontario (Item 4.1)

Pursuant to Section 14(1) of the General Provisions of the City of Hamilton Licensing By-Law 07-170, as amended, the Director of Municipal Law Enforcement requested a Show Cause Hearing, respecting the Eating Establishment – Lunch Counter Licence for Roma Pizza and Wings, located at 108 York Blvd., Hamilton, Ontario, based on the following grounds:

- (i) That the business is being operated in contravention of Section 14(1)(a) of the General Provisions of the City of Hamilton Licensing By-Law 07-170, as amended, specifically, that the requirements of this By-Law are not being complied with, including requirements contained in any applicable Schedule:

That the business is being operated in contravention of Section 5 of Schedule 21 of the City of Hamilton Licensing By-Law 07-170, as amended, in that the licence holder has not kept the premises of the eating establishment in a clean and orderly manner.

- (ii) That the business is being operated in contravention of Section 14(1)(f) of the General Provisions of the City of Hamilton Licensing By-Law 07-170, as amended, specifically that, in the opinion of the Issuer of Licenses, the business would put public safety at risk:

- (a) An inspection, by Hamilton Public Health Services, on March 11, 2008 revealed:

- Severely inadequate sanitation/housekeeping in food preparation and storage areas posing risk of cross-contamination; and,
- Hazardous foods held at unsafe temperatures.

- (b) An inspection by Hamilton Public Health Services on March 17, 2008 revealed:

- Hazardous foods held at unsafe temperatures.

- (c) An inspection by Hamilton Public Health Services on June 30, 2008 revealed:
- Hazardous foods held at unsafe temperatures;
 - Severely inadequate housekeeping in food preparation and storage areas posing risk of cross-contamination; and,
 - Inoperative fixtures and inadequate sanitation.
- (d) An inspection by Hamilton Public Health Services on July 3, 2008 revealed:
- Hazardous foods held at unsafe temperatures;
 - Severely inadequate sanitation/housekeeping in food preparation and storage areas posing risk of cross-contamination; and,
 - Inoperative fixtures and inadequate sanitation.
- (e) An inspection by Hamilton Public Health Services on September 29, 2008 revealed:
- Absence of hot and cold running water;
 - Food products stored directly on floor;
 - Hazardous foods held at unsafe temperatures; and,
 - Severely inadequate housekeeping in food preparation and storage areas posing risk of cross-contamination.
- (f) An inspection by Hamilton Public Health Services on March 19, 2009 revealed:
- Severely inadequate sanitation/housekeeping in food preparation and storage areas posing risk of cross-contamination; and,
 - Severe mouse infestation.
 - Closure order served.
- (g) An inspection by Hamilton Public Health Services on December 14, 2009 revealed:
- Lack of thermometers to validate appropriate storage temperature;
 - Lack of hand washing supplies in food preparation area;
 - Food product not properly protected from contamination;
 - Evidence of minor mouse infestation; and,

- Inadequate sanitation/housekeeping in food preparation and storage areas posing risk of cross-contamination.
- (h) An inspection by Hamilton Public Health Services on March 11, 2010 revealed:
- Hazardous food held at unsafe temperatures;
 - Lack of hand washing supplies in staff and public washrooms;
 - Minor mouse infestation; and,
 - Inadequate sanitation/housekeeping in food preparation and storage areas posing risk of cross-contamination.
- (i) An inspection by Hamilton Public Health Services on June 15, 2010 revealed:
- Food product not properly protected from contamination;
 - Equipment not adequately maintained;
 - Evidence of minor mouse infestation; and,
 - Inadequate sanitation/housekeeping in food preparation and storage areas posing risk of cross-contamination.
 - Closure order served.
- (j) An inspection by Hamilton Public Health Services on July 15, 2010 revealed:
- Minor pest infestation; and,
 - Inadequate sanitation/housekeeping in food preparation and storage areas posing risk of cross-contamination.
- (iii) That the business is being operated in contravention of Section 14(1)(h) of the General Provisions of the City of Hamilton Licensing By-Law 07-170, as amended, specifically, that the business is being operated in contravention of this By-Law or other applicable law:
- (a) Inspections between March 11, 2008 and July 15, 2010 revealed repeated non-compliance with the Health Protection and Promotion Act, R.S.O, 1990, Chapter H.7;
- (b) An inspection on September 29, 2008 resulted in a Closure Order under Section 13 of the Health Protection and Promotion Act, R.S.O, 1990, Chapter H.7;

- (c) An inspection on March 19, 2009 resulted in an Order under Section 13 of Health Protection and Promotion Act, R.S.O, 1990, Chapter H.7;
- (d) Ticket 64557342 was served on March 19, 2009, under Section 11(a)(i) - Regulation 562 of the Health Protection and Promotion Act, R.S.O, 1990, Chapter H.7, for operating a food premise maintained in a manner permitting health hazards.
- (e) An inspection on July 15, 2010 resulted in a Closure Order, under Section 13 of the Health Protection and Promotion Act, R.S.O, 1990, Chapter H.7.
- (f) Ticket 0997036A was served on July 15, 2010 under Section 11(a)(i) - Regulation 562 of the Revised Regulations of Ontario 1990 Under the Health Protection and Promotion Act, R.S.O, 1990, Chapter H.7, for operating a food premise maintained in a manner permitting health hazards.

Mr. Ormond provided an overview of the reasons for the hearing, as shown above.

Mr. Ormond entered Exhibit One, which contained the following documents:

Exhibit One:

1. Copy of Establishment Licence, Eating Establishment – Lunch Counter, 10 276832 1J, date of expiry April 5, 2011
2. Copy of Establishment Licence, Eating Establishment – Lunch Counter, 09 276832 1J, date of expiry April 5, 2010
3. Copy of Establishment Licence, Eating Establishment – Lunch Counter, 08 276832 1J, date of expiry April 4, 2009
4. Copy Establishment Licence Application, dated March 5, 2008
5. Food Safety Inspection Report, dated September 29, 2008
6. Food Safety Inspection Report, dated October 3, 2008
7. Food Safety Inspection Report, dated March 19, 2009
8. Provincial Offences Ticket 64557342, dated March 19, 2009
9. Order Pursuant to Section 13, Health Protection and Promotion Act, R.S.O, 1990, Chapter H.7, dated March 19, 2009

10. Food Safety Inspection Report, dated March 20, 2009
11. Food Safety Inspection Report, dated March 25, 2009
12. Correspondence to Mr. Sajjad Haider, dated March 25, 2009
13. Food Safety Inspection Report, dated December 14, 2009
14. Food Safety Inspection Report, dated December 21, 2009
15. Food Safety Inspection Report, dated March 11, 2010
16. Food Safety Inspection Report, dated March 12, 2010
17. Food Safety Inspection Report, dated June 15, 2010
18. Food Safety Inspection Report, dated June 18, 2010
19. Food Safety Inspection Report, dated July 15, 2010
20. Provincial Offences Ticket 0997036A, dated July 15, 2010
21. Food Safety Inspection Report, dated July 16, 2010
22. Request for Show Cause Hearing
23. Notice of Show Cause Hearing

First Witness for the City: Mr. Ormond called upon the City's first witness, Sheryl Tablante, Public Health Inspector, City of Hamilton. Inspector Tablante was sworn under Oath, prior to providing her testimony. Ms. Tablante's comments included, but were not limited to, the following:

- Inspector Tablante has been employed with City of Hamilton in the current capacity since December 2002.
- Inspector Tablante confirmed that she was familiar with the establishment located at 108 York Blvd., Hamilton, operating as Roma Pizza and Wings.
- Inspector Tablante also confirmed that she did have her notes with her and that those notes were made by herself at time of the offence, and that there had not been any alternations made to those notes. Inspector Tablante requested to refer to her notes during her testimony.
- Mr. Haider had confirmed that he did receive a copy of Inspector Tablante's notes and did not have any objection to her use of those notes during the proceedings.
- Inspector Tablante explained her attendance at 108 York Blvd. Hamilton (Roma) on September 29, 2008:

- She advised that the neighbouring business had no water, as it had been shut off due to a leak in the basement. As the water source was the same for Roma, she attended to see if that establishment was operating without water. At the time of her visit to Roma, Inspector Tablante observed that the business was operating without any potable water, the floors were dirty and there were uncovered foods. Therefore, Inspector Tablante determined that it would be best to conduct an inspection at that time. During that inspection, it was found that there were:
 - Foods being stored at unsafe temperatures: Pizza prep fridge must be repaired to provide a temperature of 4°C (40°F) at all times. She had disposed of the cheese, ham, turkey, anchovies, pepperoni and feta cheese, which were all to be found between 12 and 14 degrees Celsius.
 - Foods were not being protected from adulteration and/or cross contamination: the Operator was ordered to move all food off the floor and into the walk in cooler to be stored on racks or shelves; and, that all food must be covered with food grade plastic or a tight fitting lid. The Appellant was given until September 30, 2008 to comply with the Order.
 - There Operator failed to supply hot and cold running water under pressure anywhere on the premises. The Operator was ordered to remain closed until the water leak in the basement had been repaired and water was restored to the food premises.
 - The Operator was ordered to clean and sanitize all food contact surfaces, including counter tops, the dough mixer, and inside shelves of all refrigerators immediately.
 - Water was restored to the premises and the Operator was permitted to re-open at 4:00 p.m. that day. All remaining infractions were to be corrected within 24 hours.
- Inspector Tablante returned to Roma on October 3, 2008 for a follow up inspection, at which time the Operator was in compliance; however, she did remind him that:
 - The mandatory Food Handler Training needed to be completed by April 30, 2009; and,
 - That he needed to continue to improve on general housekeeping of the food premises; floors, walls and equipment need to be maintained in a sanitary condition at all times.

- Inspector Tablante considered the establishment to be a medium risk at that time. Clarification, respecting the meaning of “Medium Risk” was provided to the Tribunal; advising them that the risk is based on hazards to food and, at minimum, there would be two inspections per year. Inspector Tablante noted that there had been a previous inspection in March 2008 and that there were sanitation issues at that time.

Mr. Haider had no questions of the witness.

Second Witness for the City: Mr. Ormond called upon the City’s second witness, Catherine Preete, Public Health Inspector for Elgin St. Thomas Public Health (formerly a Public Health Inspector for the City of Hamilton). Inspector Preete was sworn under Oath, prior to providing her testimony. Inspector Preete’s comments included, but were not limited to, the following:

- Currently a Public Health Inspector for Elgin St. Thomas Public Health, but was a Public Health Inspector for the City Hamilton at the time of the inspections.
- Inspector Preete confirmed that she was familiar with the establishment located at 108 York Blvd., Hamilton, operating as Roma Pizza and Wings.
- Inspector Preete also confirmed that she did have her notes with her and that those notes were made by herself at time of the offence, and that there had not been any alternations made to those notes. She had also comprised a summary of her notes that she wished to refer to during her testimony.
- Mr. Haider had confirmed that he did receive a copy of Ms. Preete’s notes, but did not receive a copy of the summary; however, he stated that he did not have any objection to her use of the notes and/or summary during the proceedings.
- Inspector Preete advised that she had received a complaint from a member of the public who had said they found staples in chicken they had ordered from Roma. Inspector Preete attended at Roma on March 19, 2009 to follow up on the complaint, but was not able to find any staples at that time.
- While at the establishment, Inspector Preete determined, through her observations, that an inspection was required. Inspector Preete’s inspection on that date (March 19, 2009) inspection revealed:
 - The Operator was not yet in compliance with the mandatory Food Handler Certification By-law 07-245, but had previously been provided a compliance date of April 2011.
 - The Operator was ordered to separate raw foods from ready-to-eat foods during storage and handling.
 - The Operator was ordered to replace the dough mixer and to ensure that all surfaces are clean and maintained in good repair. The Operator was provided with a target date of March 20, 2009.

- Operator was advised that bleach is required to clean and sanitize surfaces, dishes and utensils; and, that the chlorine sanitizer concentration must be at least 100 parts per million and at 24°C or greater for at least 45 seconds. The Operator was provided a target completion date of March 20, 2009.
- There was evidence of severe pest infestation. The Operator was ordered to clean the mouse droppings.
- The Operator was ordered to tightly seal or screen all entrances to prevent the entry of insects, birds, rodents and other pests, to ensure that ceilings are kept in good repair, and to replace two tiles on the ceiling above the food preparation area, which were damaged during a water leak six (6) months prior.
- The Operator was also ordered to thoroughly clean the ventilation system, to clean out the front cooler (that was not being used) of old food product, maintain the premises in a clean and sanitary condition at all times, and to remove all materials not associated with the daily operation of a food premises.
- At that time, the property was closed until such time as a pest control company had addressed the pest infestation issue, and a complete a thorough cleaning would need to be completed before the establishment could re-open.
- Upon return to her office, Inspector Preete met with Mr. Hart, Food Safety Manager, respecting the inspection of Roma. On March 25, 2009, Inspector Preete returned to the establishment at which time she issued a ticket to Mr. Haider (Public Health is permitted 30 days from the date of inspection to issue a ticket.)
- There was no trial with respect to these charges, but the ticket was paid.
- A copy of the Ticket issued had been entered as Item 24 to Exhibit One.
- Mr. Robert Hart, Food Safety Manager, Public Health Services, City of Hamilton, corresponded with Mr. Haider on March 25, 2009. Mr. Hart's letter outlined the inspections for the premises from March 11, 2008 to March 19, 2009. At that time, Mr. Haider was advised that there were concerns that, despite the issuance of warnings from Public Health Inspection staff, numerous re-inspections and the issuance of Provincial Offence Notices, and the closure of the premises, there is a strong pattern of non-compliance that suggests that a repeat of serious violations may occur.

- Mr. Haider was asked to attend at the Public Health offices for a meeting to discuss the past history of the establishment, and to discuss with Public Health staff means to prevent future occurrences so that Public Health would not be required to ticket or close the premises in the future.
- On December 14, 2009, Inspector Preete attended at the establishment to conduct a routine inspection. The inspection revealed:
 - Thermometer was not accurate. The Operator was ordered to provide a thermometer in the front cooler that was easily readable and accurate.
 - No soap at hand washing station in the food preparation area. Operator was ordered to provide soap in a dispenser at the hand basin in the food preparation area.
 - Food was not properly protected. The Operator was ordered to store opened canned items in easily cleanable containers (plastic), to use tongs to handle raw chicken, and that those tongs are not to be stored directly on top of a product that the tongs could touch.
 - Mouse droppings were found on the floor in the bottom of the cupboard in the food preparation area. The Operator was ordered to clean the mouse droppings.
 - Dead cockroaches were found in traps and in two boxes of paprika – the paprika was thrown out.
 - The Operator was also ordered to ensure that the ceilings and walls were kept clean and in good repair, the ventilation system and the bottom of the front counter were to be thoroughly cleaned.
- On December 21, 2009 Inspector Preete attended at the premises for follow up inspection to determine if the orders from the previous inspection had been completed. Most of the items on the Order had been completed by this time.
- Due to the establishment's history, Inspector Preete determine that it would be in the public's best interest to more closely observe the premises, the risk rating for Roma increased to high at this time.
- On March 11, 2010, Inspector Preete attended at the premises. The inspection revealed:
 - The stand alone freezer in the front of the store was not achieving the appropriate temperature of -18°C. The food was moved from the stand alone freezer in the front of the store to the chest freezer.

- The Operator was ordered to defrost the stand alone freezer of thick ice, as the temperature was -9°C at the time of inspection and should have been at -18°C.
 - The Operator was ordered to equip the facility with liquid hand soap in a dispenser and paper towels in a dispenser, a hot air dryer or a continuous cloth roller in both the staff and public washrooms. Target dated was March 12, 2010.
 - The Operator was also ordered to clean up the mouse droppings in the front area of the store around the hand sink, and under the dough preparation table; and, the dead cockroaches in the compressor area of the condiment cooler.
 - The walls of the walk in cooler and the wall by the oven, as well as the floor in the walk in cooler are to be thoroughly cleaned
 - Walls are to be kept clean and in good repair at all times.
 - On that date, Mr. Haider had notified Inspector Preete that it was his intention to sell the business (he did not own the building).
 - Inspector Preete had removed the Green Public Health sign (that shows compliance) from the establishment at that time.
- On March 12, 2010, Inspector Preete conducted a follow up inspection of had been done.
 - On June 15, 2010, Inspector Preete conducted a routine inspection of the premises and found the following:
 - A spoon was found in a can of tomato sauce; both the spoon and the sauce were thrown out.
 - Repairs to the chest freezer were required. The Operator was given a target date of June 18, 2010.
 - Mouse droppings were found on the floor by the flour pallets, dead meal moths were found on the floor and on the shelf where the take-out bags are stored.
 - Dead cockroaches were also found in the paprika, which was thrown out.
 - The Operator was ordered to launder the pizza delivery bags. As a result of this inspection, the Operator was provided until June 18, 2010 to comply, at which time a follow up inspection would be conducted.
 - On June 18, 2010, Inspector Preete attended the premises as a follow up to the June 15, 2010 inspection. The Operator had complied with all requests of the previous inspection.
 - During the June 18, 2010 inspection, Mr. Haider advised Inspector Preete that he was still planning on selling the business, but confirmed that the establishment was still open for business.

- On July 15, 2010, Inspector Preete and Dave King, Public Health Inspector, City of Hamilton, attended the establishment, as she had received a complaint from a customer indicating that they had seen live rodents in the restaurant and mouse droppings all over the counter and in the pizza display unit. The inspection, revealed the following:
 - Personal belongings such as nail clippers and a toothbrush at the hand sink. The Operator was ordered to move the personal items from the hand sink area to the staff washroom.
 - The Operator was ordered to provide a separate room, compartment, locker or cupboard for storage of wearing apparel of the employees. A compliance date of July 19, 2010 was provided.
 - Knives used for food preparation are to be stored in a knife block and not between the counter top or the chest freezer.
 - Cutting boards were very worn down; the Operator was ordered to keep up on the maintenance and proper cleaning of the cutting boards.
 - The seal on the condiment door was being maintained using tape. The Operator was ordered to properly repair/replace the seal, as the use of tape is not satisfactory.
 - Pizza pans were being stored in an old, dirty cardboard box. The Operator was ordered to thoroughly clean all pizza pans and to store them in an easily cleanable container – not a cardboard box.
 - The dough mixer was to be disassembled, cleaned and sanitized, to remove the build up of old food particles, and stored properly.
 - All surfaces were to be maintained and kept in good repair.
 - The hardwood cutting boards, blocks, tables and bowls are to be maintained in a clean and sanitary manner.
 - Mouse droppings were found on the floor and in the cupboards in front of the service area of the restaurant, also on the floor of the pizza making area. Dead cockroaches were also found. The Operator was given until July 19, 2010 to remedy this issue.
 - The wall behind the pizza oven, the shelves in the common cooler, and the walk in cooler all required a thorough cleaning.
 - In order to maintain clean and sanitary conditions, the entire premises needed to be cleaned and thoroughly sanitized.
 - The establishment was ordered to remain closed until all items found in the inspection were corrected and a re-inspection conducted. The doors were locked and the establishment was closed to public until further notice.
 - Inspector Preete contacted the pest control company who confirmed the use of their services and a contract for bi-monthly visits/treatments.
 - As a result of the inspection, a ticket was issued and a follow up inspection was scheduled for July 16, 2010.
- On July 16, 2010, a follow up inspection was conducted to determine compliance with the orders issued on July 15, 2010. The inspection revealed:

- The worn cutting boards were still in use, but the inspector gave the Operator until next inspection to have them replaced. The establishment was re-opened to the public at that time, as all other corrections were done.

Mr. Ormond entered Item 25 to Exhibit One – Food Safety Inspection Report, dated December 11, 2010, conducted by Timothy James, Public Health Inspector, City of Hamilton, which showed that the Operator was ordered to:

- (i) Scrub free of grease and dirt accumulation, the stainless steel rack, as discussed with the Owner;
- (ii) Remove from the premises the wooden shelf and two compartment sink, as discussed with the Owner; and,
- (iii) To ensure that all surfaces are clean and maintained in good repair.

Mr. Haider had no questions of Inspector Preete.

Third Witness for the City: Mr. Ormond called upon the City's third witness, David King, Public Health Inspector, City of Hamilton. Inspector King was sworn under Oath, prior to providing his testimony. Inspector King's comments included, but were not limited to, the following:

- Inspector King advised that he has been an Inspector with the City of Hamilton for 21 years, and is familiar with 180 York Blvd., Hamilton (Roma).
- Inspector King also confirmed that he did have his notes with him and that those notes were made by himself at time of the offence, and that there had not been any alternations made to those notes. Inspector King requested to be able to refer to his notes during his testimony.
- Mr. Haider did not object to Inspector King's use of his notes during the proceedings.
- Inspector King advised that the two gentlemen who were present, during his attendance with Inspector Preete on July 15, 2010, were Tim Haider and Imran Haider; Sajjad Haider was not in attendance at that time.
- During that inspection, Inspector King observed:
 - Rodent feces, which were dark in colour and moist, indicating that it was new, on the counters, the floor, and on the sugar storage bins.
 - Dead cockroaches.
 - A build up of grime, and an accumulation of dirt of dust throughout the establishment.

- The deep fryer had dried on grease build up.
- The dough machine had a build up of incrustated food on its surfaces.
- The freezers had a layer of grime and food accumulation, and the interior shell of the chest freezer was cracked with a hole inside; allowing access to the insulation.
- The baking trays and pizza racks were dirty and had a build up of dried on food and an accumulation of built up grime.
- The employee hand washing shelf contained toothpaste and personal items.
- There was a room that had a bed in it, which is in contravention the By-law. The Inspectors were told it was for resting, not sleeping.
- There was dirt and debris on floor area, and the garbage was overflowing.
- Inspector Preete had given a verbal issue to close the establishment.

Mr. Haider did not have any questions of Inspector King.

The City had no further questions of witnesses.

Mr. Haider had no witnesses.

Mr. Sajjad Haider was affirmed, prior to providing his testimony.

- Mr. Haider stated that he had owned Roma Pizza and Wings, located at 180 York Blvd., Hamilton, for 3 years – he had opened the business in March 2008.
- He does not have any employees; the business is owned and operated by he and family.
- He works full time, 7 days per week, from open to close – 11:00 a.m. until 10:00 or 11:00 p.m. each day.

Mr. Haider's closing remarks included, but were not limited to, the following:

- For the first couple of inspections there was another food store right next to store. The store next door is closed and empty now. The building is old and has mice that, at night, come from the closed store into his establishment and leave droppings. Mr. Haider stated that there are no mice in his establishment.
- Mr. Haider advised that he is still trying to sell his business, as it has not given him anything, but depression and stress.
- There was a potential buyer, but the buyer was unable to get the required loan.
- Mr. Haider has listed the business on a real estate site, and has contacted a real estate agent.

- Mr. Haider does not own the property – he leases it.
- As soon as he sells the business, he will close.
- He has hired a pest control service to remove the dead cockroaches and help with the mouse infestation.
- Mr. Ormond asked Mr. Haider that, as he was aware that the building next door had mice, did he not feel it would be appropriate to be more diligent as the Owner. Mr. Haider responded that he had tried.
- Mr. Haider agreed that inspection reports and violations were accurate.
- Mr. Haider agreed that the closure orders were correct.
- He did not have a mandatory Food Handling Certificate until 2010, didn't know that he needed to get a Food Handling Certificate, and didn't know what temperatures needed to be for storing food.
- With respect to the grime and food particles stuck on walls, Mr. Haider stated that it was an old store.
- Mr. Haider stated that it wasn't that big of a problem because the mouse droppings were not on surfaces where food was prepared.
- He did agree that there was old sauce on the dough board.
- When asked if when he saw the mouse droppings on a regular basis, did he take it upon himself to call the pest control company to take a more proactive stance, Mr. Haider replied that the pest control company would put chemicals in food for the mice that would show green in their feces so they were able to tell if they were old or new droppings. Mr. Haider stated that he barely sees any droppings on floor in now.
- When asked if he had attempted to seal any openings to prevent mice from entering his establishment, Mr. Haider responded - yes, he attempted, but mice can get through anything – don't know where they are coming from.
- As there were dead cockroaches found in the paprika. Mr. Haider was asked if he was doing regular food inspections for bugs, etc. His response was that he didn't use the paprika very often so he didn't notice the roaches until they were found during the inspection – and then the paprika was thrown out.
- Mr. Haider confirmed the location of the establishment to be at Bay Street and York Blvd. (Hamilton), by Copps Coliseum, that the hours of operation were 11:00 a.m. to 10:00 p.m. or 11 p.m., seven days per week, and that his customers were mostly young kids and some delivery orders.
- Marshall's Pest Control inspects the rodent baits every two months and has seen dead mice inside stations. There were couple of occasions when baits were empty (of poison).
- Mr. Haider was asked for the reason why there have been so many repeat offences regarding sanitation, improper housekeeping, cross contamination, etc.? Mr. Haider responded by stating that until last year he didn't know that he was in non-compliance, and that floor is old and has small holes in the tiles so even if you clean it still looks dirty. Mr. Haider admitted to the issues regarding cleanliness.
- Mr. Haider was asked if when he had decided to get into the take-out business if he did any research to see what was required of him. Mr. Haider responded that no, he did not. He wants to sell business as it's not good for him or for the public.

- When asked how he would avoid repeating the same history of non-compliance in the future, Mr. Haider stated that, from his point of view, there was nothing serious enough to revoke his licence.
- Mr. Haider was asked what his intentions were (to prevent future occurrences of non-compliance) if he were to continue to operate the business. Mr. Haider's response was that he would think about maybe hiring another person to clean at end of each day.

Mr. Ormond's closing comments included, but were not limited to, the following:

- That the Issuer of Licenses has a responsibility first to ensure consumer protection, public health and safety, and to ensure that the Licensee is in compliance with the Licensing By-law (07-170).
- Public Health staff has tried, on numerous occasions, to educate Mr. Haider with respect to the rules and regulations regarding the operation of a food establishment.
- Ignorance of the law is no defence, and Mr. Haider has had ongoing infractions since 2008; violations of the Licensing By-law 07-170, and the Provincial Health Protection and Promotion Act, R.S.O., 1990, Chapter H.7.
- The Appellant is responsible for ensuring that environment is clean, sanitary and in compliance to minimize public risk.
- There have been several complaints from the public (customers) with respect to health and safety issues.
- Public Health Inspectors were able to confirm that the feces, from both mice and cockroaches, were not limited to one area of the premises, but were found throughout the establishment.
- Mr. Haider is responsible for providing an adequate level of protection to limit the health risk to his property.
- Mr. Ormond read through the grounds for the hearing (refer to pages 4 through 7).
- For the Tribunal's reference, Mr. Ormond provided copy of section 14(1), of the General Provisions of the Licensing By-law 07-171, the reasons when the Issuer of Licenses may recommended that a hearing be held to consider whether a licence should be revoked or suspended, where the Issuer of Licenses finds ...; and, 14(1)(f) "that in the opinion of the Issuer of Licenses, the business would put public safety at risk.
- Mr. Ormond also reminded the Tribunal that in Mr. Haider's testimony, the Licensee admitted that the business was "not good for public"
- Mr. Ormond provided an overview of the repeat violations shown in the inspection from 2008 until December 11, 2010, that Public Health staff have attempted to educate the Operator, inspections have been done, closure orders and charges have been issued, and that there was a conviction for one of those charges.
- Mr. Ormond believes that there is ample evidence to show that neither the education nor the closures have worked. Public Health has increased their safety rating for this establishment from a medium risk to a high risk, due to ongoing concerns.

- The City believes that there are no conditions that can be effectively imposed upon this licence that have not already been done; and, as the Appellant is intending to sell the business there is does not seem to be any motivation for matters to improve. The City believes this business to be a high risk operation with respect to public health and safety.
- The property, which is leased by Mr. Haider (not owned) could still be leased and operated as a food establishment.

Staff's Recommendation:

That the Eating Establishment – Lunch Counter Licence for Roma Pizza and Wings, located at 108 York Blvd., Hamilton, Ontario be revoked, for the following reasons:

That the business is being operated in contravention of Section 14(1)(f) of the General Provisions of the City of Hamilton Licensing By-Law 07-170, namely, that in the opinion of the Issuer of Licenses the business would put public health and safety at risk.

The Hamilton Licensing Tribunal had moved into Closed Session, at 11:59 a.m., to deliberate upon the submissions of the parties, respecting the Eating Establishment – Lunch Counter Licence (No. 10 276832 1J) issued to Sajjad Haider, for the business known as Roma Pizza and Wings, located at 108 York Blvd., Hamilton, Ontario.

As shown in the Closed Session Minutes, the Tribunal reconvened in Open Session at 12:06 p.m.

Having heard the submissions of the parties, the Tribunal provided their recommendation, as shown as Item 2 in the Hamilton Licensing Tribunal Report 11-001.

- (e) **Appeal Hearing:** Ms. Beverly Lynch-Sealy, respecting the Renewal Application for a Residential Care Facility Establishment Licence for Still Waters Second Level Lodging Home, located at 182 Cannon Street West, Hamilton, Ontario (Item 4.2)

On January 11, 2011, the Director of Municipal Law Enforcement sent correspondence to Ms. Beverly Lynch-Sealy advising her that the City would be requesting that the Licensing Tribunal dismiss her appeal request, respecting her renewal application for a Residential Care Facility Establishment Licence for Still Waters Second Level Lodging Home, located at 182 Cannon Street West, Hamilton, Ontario, as the property has been sold and is currently being used as a single family dwelling.

Copies of the following documents were included with the correspondence to Ms. Lynch-Sealy:

1. Province of Ontario, Land Registry Office, Parcel Register for Property Identifier 17150-0108 (LT), 182 Cannon Street West, Hamilton, Ontario; and,
2. Residential Tenancy Agreement (Ontario), dated December 29, 2010, for rental premises at 182 Cannon Street West, Hamilton, Ontario.

Neither Beverly Lynch-Sealy nor her legal counsel was in attendance at the hearing.

Mr. Ormond's opening comments included, but were not limited to the following:

- Owner of the property located at 182 Cannon Street West, Hamilton, has no intention of using the property as a second level lodging home.
- Beverly Lynch-Sealy was notified by the Director of Municipal Law Enforcement, on January 11, 2011, that the City would be requesting that the Tribunal dismiss her appeal, respecting her renewal application for a Residential Care Facility Establishment Licence, for lack of standing, as the property has been sold and the building is no longer available for the Appellant's use.
- Mr. Ormond entered as Exhibit One, a copy of a letter from the new property owner, dated January 11, 2011, which states that the property located at 182 Cannon Street West, Hamilton was purchased by him in November 2010; and, that it is being used as a single family dwelling. At present, there is a tenancy agreement in place for use of the property as a single family dwelling, and that he (the Owner) has no intention of using this property as a Residential Care Facility. A copy of the Residential Tenancy Agreement was attached to that letter.
- Mr. Ormond confirmed that, although the Residential Tenancy Agreement contained in Exhibit One was not signed, he did have a signed copy in his records.

Staff's Recommendation:

That the appeal hearing request, submitted by Beverly Lynch-Sealy, respecting the Renewal Application for a Residential Care Facility Establishment Licence for Still Waters Second Stage Lodging Home, located at 182 Cannon Street West, Hamilton, Ontario, be dismissed, as the property has been sold and is currently being used as a single family dwelling.

(f) **Show Cause Hearing: Mr. Kaushaukumar Kanjibhai Patel, respecting Mr. Patel's Taxi Cab Driver Licence (Item 5.1)**

Pursuant to Section 14(1) of the General Provisions of the City of Hamilton Licensing By-Law 07-170, as amended, the Director of Municipal Law Enforcement requested a Show Cause Hearing, respecting the Taxi Cab Driver Licence issued to Mr. Kaushaukumar Kanjibhai Patel, before the Hamilton Licensing Tribunal, based on the following grounds:

The Issuer of Licenses has found that Section 14(1)(f) of the General Provisions – that, in the opinion of the Issuer of Licenses, the business would put public safety at risk; and, Section 14(1)(g) of the General Provisions – that, in the opinion of the Issuer of Licences, the business is or will not be carried on in compliance with the law and affords reasonable grounds for belief that the person will not carry on or engage in this business in accordance with the law or with honesty or integrity, are to be considered as there is a conviction of assault against Kaushaukumar Kanjibhai Patel.

Mr. Ormond's opening comments included, but were not limited to, the following:

- Mr. Ormond advised that on or about August 2009, the Appellant was charged with the sexual assault of a passenger in his Taxi Cab, and that the Appellant had been found guilty by the Courts. However, Mr. Patel's sentencing dated is forthcoming.
- Mr. Ormond also advised that, after hearing of the conviction, the City asked Mr. Patel to voluntarily return licence and he had refused.

Mr. Patel's opening comments included, but were not limited to, the following:

- He has been in Canada 5 ½ years and has a wife and two children to support.

Mr. Ormond entered Exhibit One, which contained the following documents:

1. Copy Mobile Licence Application, dated September 8, 2008
2. Copy of Mobile Licence, Taxi Cab Driver – Hamilton 10 277497 2M, date of expiry September 8, 2011
3. Copy of Mobile Licence, Taxi Cab Driver – Hamilton 09 277497 2M, date of expiry September 8, 2010
4. Copy of Mobile Licence, Taxi Cab Driver – Hamilton 08 277497 2M, date of expiry September 8, 2009

5. Copy Hamilton Police Service Vulnerable Sector Screening, dated August 25, 2008
6. Request for Show Cause Hearing
7. Notice of Show Cause Hearing
8. Request for Criminal Records Check and Drivers Abstract
9. Conviction Notice, Section 271 of Criminal Code of Canada

Mr. Patel called upon his first character witness, Mr. Harpit (Harry) Daliwahl, who was solemnly affirmed, prior to providing any testimony.

While attempting to question his witness, it became apparent to the both the Tribunal and staff that Mr. Patel's understanding of the English language and verbal communication skills (in English) were very limited, and that he could not be provided a fair hearing under these circumstances. Therefore, following resolution was approved:

- (a) That the show cause hearing for Mr. Kaushaukumar Kanjibhai Patel, respecting his Taxi Cab Driver Licence, be adjourned to the nearest available hearing date, to be **peremptory** and no later than March 10, 2011, in order to allow the appellant an opportunity to discuss the matter with his legal counsel, and to determine if he wishes to have his legal counsel present at that hearing.
- (b) That Mr. Kaushaukumar Kanjibhai Patel's Taxi Cab Driver Licence be suspended until such time as the hearing proceedings, respecting that Licence, have been completed and a decision has been ratified by Council.
- (c) That the Notice of Hearing be provided to both Mr. Patel and his legal counsel in English and Hindi.
- (d) That Mr. Kaushaukumar Kanjibhai Patel return his Taxi Cab Driver Licence to the Issuer of Licences within 24 hours from the time of this hearing (January 20, 2011); being no later than 4:30 p.m. on Friday, January 21, 2011.
- (e) That the Tribunal Clerk be directed to obtain the services of a Hindi interpreter to translate the Notice of Hearing; and, to attend at the upcoming hearing, respecting Mr. Kaushaukumar Kanjibhai Patel's Taxi Cab Driver Licence.
- (f) That Mr. Kaushaukumar Kanjibhai Patel and his legal counsel be requested to provide, to the Hamilton Licensing Tribunal at the upcoming

peremptory hearing, the hearing transcript and the reasons for conviction provided by the Courts with respect to Mr. Patel's conviction of sexual assault.

(g) Appeal Hearing: Mr. Ahmad Masheh, respecting the Refusal of Mr. Masheh's Application for a Taxi Cab Driver Licence (Item 5.2)

On January 5, 2011, the Director of Municipal Law Enforcement corresponded with Mr. Ahmad Masheh advising him that, in accordance with the City of Hamilton Licensing By-law 07-170, as amended, his application for a Taxi Cab Driver Licence was refused, based on the following grounds:

1. That in accordance with Section 12(1)(a) of the City of Hamilton Licensing By-law, as amended, a policy under Section 15 requires refusal.
2. That, in accordance with Section 15(1) and Appendix "A", Section "H", of the City of Hamilton Licensing By-law 07-170, as amended, an application for a Taxi Cab Driver Licences shall be refused if either six (6) demerit pints have been lost or there are four (4) driving convictions within one year of the licence application.

Specifically,

- (a) That the Province of Ontario's Ministry of Transportation Driver's abstract No. 086-L-1418, dated December 23, 2010, for Ahmad Masheh shows a current demerit points total of six (6).

Mr. Ormond advised the Tribunal that the Appellant was in full agreement with a Statement of Facts. Mr. Masheh confirmed Mr. Ormond's comments.

Mr. Ormond entered Exhibit One, which contained the following documents:

- 1 Copy of Mobile Licence Application, dated December 24, 2010
2. Province of Ontario Ministry of Transportation Drivers Abstract No. 086-L-1418 for Mr. Ahmad Masheh, dated December 23, 2010
3. Refusal Letter
4. Notice of Show Cause Hearing

Neither Mr. Ormond nor the Appellant had any questions or witnesses they wished to call upon. Therefore, staff provided the following recommendation:

Council – January 26, 2011

Staff Recommendation:

That the application for a Taxi Cab Driver Licence, to be submitted by Mr. Ahmad Masheh, be accepted and a Licence be issued, provided that Mr. Masheh satisfies all necessary requirements, as set out in the Licensing By-law 07-170, as amended, with the following conditions:

- (i) That Mr. Ahmad Masheh be required to submit a current Ministry of Transportation driver abstract to the Issuer of Licences at the three (3) month and six (6) month period, for a one year period from the date of issuance of the Taxi Cab Driver Licence; and,
- (ii) That Mr. Ahmad Masheh be required to submit a current Police Security Records Check at the three (3) month and six (6) month period, for a one year period from the date of issuance of the Taxi Cab Driver Licence,

The Hamilton Licensing Tribunal had moved into Closed Session, at 1:05 p.m., to deliberate upon the submissions of the parties, respecting the Taxi Cab Driver License application submitted by Mr. Ahmad Masheh.

As shown in the Closed Session Minutes, the Tribunal reconvened in Open Session at 1:26 p.m.

Having heard the submissions of the parties, the Tribunal provided their decision, as shown as Item 5 in the Hamilton Licensing Tribunal Report 11-001.

(h) PRIVATE & CONFIDENTIAL (Item 5)**(i) Closed Session Minutes of December 9, 2010 (Item 5.1)**

As the Licensing Tribunal determined that no discussion, respecting the Closed Session Minutes of the December 9, 2010, meeting of the Licensing Tribunal was required, the Minutes were approved in Open Session, as shown below:

The Closed Session Minutes of the December 9, 2010, meeting of the Hamilton Licensing Tribunal were approved, as presented.

The December 9, 2010, Minutes, of Hamilton Licensing Tribunal, will remain confidential and restricted from public disclosure, in accordance with exemptions provided in the Municipal Freedom of Information and Protection of Privacy Act."

(i) ADJOURNMENT (Item 6)

There being no further business, the Hamilton Licensing Tribunal adjourned at 2:19 p.m.

Respectfully submitted,

Councillor T. Whitehead, Chair
Hamilton Licensing Tribunal

Stephanie Paparella,
Legislative Assistant
January 20, 2011