



CITY OF HAMILTON

CORPORATE SERVICES DEPARTMENT City Clerk's Division

TO: Mayor and Members General Issues Committee	WARD(S) AFFECTED: (City Wide)
COMMITTEE DATE: April 18, 2012	
SUBJECT/REPORT NO: Amendment to the Hamilton Licensing Tribunal - Decision Making Authority (City Wide) (CL12009)	
SUBMITTED BY: Rose Caterini, City Clerk	PREPARED BY: Stephanie Paparella 905-546-2424 ext. 3993
SIGNATURE:	

RECOMMENDATION

That the By-law to amend the Hamilton Licensing By-law 07-170, attached as Appendix "A" to Report CL12009, be passed.

EXECUTIVE SUMMARY

The City of Hamilton Licensing Tribunal was established in accordance with Section 23.5 of the *Municipal Act, 2001* and under Section 3 of the City's Licensing By-law No. 07-170. Section 3 reads as follows:

- 3.(1) A Tribunal is hereby established pursuant to Section 23.5 of the Municipal Act, 2001, S.O. 2001, c. 25, as amended, under the name "Hamilton Licensing Tribunal", which shall be composed of not fewer than three members of Council who are appointed by resolution of Council, and one such member shall be designated as the Chair of the Tribunal.
- (2) In place of Council, the Licensing Committee shall, for the purpose of business and lottery licensing, hear the parties to a hearing or afford the parties to an opportunity to be heard, and make decisions and recommendations from hearings so held.

Currently, the Hamilton Licensing Tribunal is required to provide its recommendations to Council for final approval. However, unless Council rehears a matter, it can only approve the recommendations without comment.

Therefore, staff is recommending that the Hamilton Licensing Tribunal be delegated the authority to make the final decision with respect to hearings regarding business licences issued by the City of Hamilton (listed under Section 30 of the General Provisions of Hamilton Licensing By-law 07-170).

Staff is also recommending housekeeping changes to the hearings process as a whole that convey it in a clearer manner benefiting the Licensing Tribunal, staff, the parties and the public.

The City's authority respecting lottery licensing is provided in accordance with Section 207 of the Criminal Code of Canada, and Sections 5 and 6 of the Lieutenant Governor of Canada's Order-in-Council 1413/08 (Approved and Ordered August 12, 2008), which reads as follows:

5. A municipal council may at any time suspend, cancel, or refuse to issue a licence or authorization that it may issue where,
 - (a) there has been a breach of any term, condition, directive or standard;
 - (b) there are reasonable grounds to believe that the applicant or licensee will not conduct and manage the lottery scheme in accordance with the law or with honesty or integrity;
 - (c) in its opinion it is in the public interest to do so; or
 - (d) an applicant or licensee fails to submit financial reports or other information in accordance with the Registrar's requirements.

6. A municipal council may attach terms and conditions to a licence that it issues.

Under the *Municipal Act, 2001*, only the authority to hold the hearing on a lottery licensing matter can be delegated by Council, not the authority to make the final decision. Therefore, the Hamilton Licensing Tribunal would continue to hold the hearing, and to provide its recommendations regarding the suspension, cancellation or refusal of lottery licences to Council for final disposition, as set out in the Lottery Licensing By-law No. 04-134.

Alternatives for Consideration – Not Applicable

FINANCIAL / STAFFING / LEGAL IMPLICATIONS

Financial: There are no financial implications associated with the recommendations contained in Report CL12009.

Staffing: There are no staffing implications associated with the recommendations contained in Report CL12009.

Legal: There are no legal implications associated with the recommendations contained in Report CL12009.

HISTORICAL BACKGROUND (Chronology of events)

Not applicable.

POLICY IMPLICATIONS

None.

RELEVANT CONSULTATION

Staff has consulted with other municipalities, such as London, Ottawa, Kingston, Barrie, Mississauga and Greater Sudbury and all, but one, has delegated final decision making authority to their respective hearings body.

Legal Services

ANALYSIS / RATIONALE FOR RECOMMENDATION

It is essential to maintain the integrity of the hearings process in order to provide fairness to all parties. As all Council members are not in attendance to hear the submissions of staff or of the appellants, which are provided under oath or affirmation, nor present to deliberate upon the submissions of those parties, they would not be able to appropriately comment or fairly debate the matters before them without a rehearing, an unnecessary duplication.

In addition, the hearings process can be set out in a clearer manner so that all those involved can more easily follow it, step by step, from the time the Issuer of Licences decides to refuse to issue a licence or to recommend the suspension or revocation of a licence until the Licensing Tribunal makes its final decision.

Therefore, to improve the hearings process staff is recommending that the Licensing Tribunal have final approval authority, with the exception of lottery licensing matters. Lottery licensing matters are excepted because only the authority to hold the hearing and not the authority to make the final decision can be delegated under the relevant provisions of the *Municipal Act, 2001*.

ALTERNATIVES FOR CONSIDERATION

None.

CORPORATE STRATEGIC PLAN

Focus Areas: 1. Skilled, Innovative and Respectful Organization, 2. Financial Sustainability, 3. Intergovernmental Relationships, 4. Growing Our Economy, 5. Social Development, 6. Environmental Stewardship, 7. Healthy Community

APPENDICES / SCHEDULES

Appendix “A” to Report CL12009 – A By-law to Amending the Hamilton Licensing By-law 07-170

Authority: Item , General Issues Committee
Report (CL12009)
CM: April 25, 2012
Bill No.

CITY OF HAMILTON

BY-LAW NO. _____

To Amend By-law No. 07-170, a By-law to License and Regulate Various Businesses

WHEREAS Council enacted a by-law to license and regulate various businesses being City of Hamilton By-law No. 07-170;

AND WHEREAS this By-law provides for 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;

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

1. Section 3 of the General Provisions of By-law No. 07-170 is amended by deleting subsections 3(1) and 3(2) and replacing them with the following new subsections 3(1) and 3(2):
 - 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.
2. Subsection 4(4) of the General Provisions of By-law No. 07-170 is deleted and replaced with the following new subsection 4(4):
 - 4(4) When the Issuer of Licences 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 Issuer of Licences for one year from the date of the

refusal. Any such further application shall be returned to the applicant in accordance with subsection (3).

3. Sections 12, 13 and 14 of the General Provisions of By-law No. 07-170 are deleted and replaced by the following new sections 12, 13 and 14:

12.(1) The Issuer of Licences 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 Issuer of Licences:
 - 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 Issuer of Licences 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 Issuer of Licences refuses to issue a licence, the Issuer of Licences 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 Issuer of Licences has recommended the suspension or revocation of a licence, the Issuer of Licences 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.

4. Sections 16, 17 and 18 of the General Provisions of By-law No. 07-170 are deleted and replaced by the following new sections 16, 17 and 18:

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 Issuer of Licences 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.

5. Section 10 of Schedule 19 of By-law No. 07-170 is amended by deleting the words "Council or".
6. Subparagraph 29(4)(c)(i) of Schedule 25 of By-law No. 07-170 is amended by deleting the words "or by Council"
7. Subparagraph 29(4)(iii) of Schedule 25 of By-law No. 07-170 is amended by deleting the words "by Council".
8. Subsection 44(1) of Schedule 25 of By-law No. 07-170 is amended by deleting the words "Tribunal or Council" and replacing them with "the Licensing Tribunal".
9. Subsection 46(13) of Schedule 25 of By-law No. 07-170 is amended by deleting the words "subject to the approval of Council".
10. This By-law comes into force on the day it is passed.

PASSED this _____ day of _____, 20____.

R. Bratina
Mayor

R. Caterini
City Clerk