

CITY OF HAMILTON

PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Parking and By-law Services Division

TO: Chair and Members Planning Committee	WARD(S) AFFECTED: CITY WIDE
COMMITTEE DATE: April 16, 2013	
SUBJECT/REPORT NO: Enforcement of Businesses Operating without a Licence (PED13037(a)) (City Wide)	
SUBMITTED BY: Tim McCabe General Manager Planning and Economic Development Department	PREPARED BY: Marty Hazell (905) 546-2424 Ext. 4588
SIGNATURE:	

RECOMMENDATION

- a) That the late fee for renewing a business licence within 60 days after the annual expiry date be increased from \$60 to \$250, and that the City’s User Fee and Charges By-Law be amended accordingly;
- b) That the protocol for informing the Ward Councillors of expired business licences in their respective Wards, as prescribed in Appendix “A” to Report PED13037(a) (Enforcement of Businesses Operating Without a Licence) be approved.

EXECUTIVE SUMMARY

At the February 19, 2013 Planning Committee meeting, concerns were expressed regarding the number of business license holders who do not renew their licences on time. Staff was directed “to advise the respective Ward Councillor to assist in compliance of applications”. The purpose of this Report is to recommend a protocol for

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involving Councillors without compromising the enforcement process, and to recommend a higher late fee to encourage timely business license renewals.

Alternatives for Consideration - Not Applicable

FINANCIAL / STAFFING / LEGAL IMPLICATIONS (for Recommendation(s) only)

Financial: Increasing the fee for renewing a business licence after expiry from the current \$60 to \$250 is based on full cost recovery for administrative and enforcement staff as well as additional costs, for example, for vehicles, mileage and printing.

Staffing: N/A

Legal: In accordance with the provisions of the Municipal Act, 2001, a Municipality may establish license fees to reflect cost recovery (or less) but cannot base the fees solely on revenue generation or in an effort to discourage certain types of businesses.

HISTORICAL BACKGROUND (Chronology of events)

In discussing Report PED13037 (Enforcement of Businesses Operating Without a Licence) at the Planning Committee on February 19, 2013, concerns were expressed regarding the number of business license holders who do not renew their licences on time. Staff was directed “*to advise the respective Ward Councillor to assist in compliance of applications*”.

POLICY IMPLICATIONS/LEGISLATED REQUIREMENTS

City Council policy is to establish business license fees which reflect full cost recovery for administration and enforcement.

RELEVANT CONSULTATION

Legal Services and Finance were consulted in the preparation of this Report.

ANALYSIS / RATIONALE FOR RECOMMENDATION

(include Performance Measurement/Benchmarking Data, if applicable)

Significant workplace change was required to correct the many deficiencies in the City's Business Licensing Program identified in the 2007 Operational Review. Licensing enforcement is now appropriately prioritized with proactive inspections being a fundamental component.

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Proactive efforts and performance management of staff has resulted in a significant increase in licences issued and charges for businesses operating without a licence as reported in Report PED13037 on February 19, 2013. There continue to be significant resources assigned to enforcing licensed businesses which are not in compliance with Licensing By-Law requirements and in following up on businesses which do not renew their licences on time.

With respect to business license renewals, Section 6(6) of the Licensing By-law requires that:

- “(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.”*

In accordance with the City’s User Fee and Charges By-Law a late fee of \$60 is currently charged to any license holder who fails to renew their licence before it expires.

In 2012, there was an average of 198 licences per month which were not renewed before the expiry date, and the average to-date in 2013 is 181 licences per month not renewed before the expiry date. The following table identifies the number of licences not renewed before they expire by month for 2012 and 2013 to-date:

Month	2012 Licenses not renewed before the expiry date	2013 Licenses not renewed before the expiry date
January	222	228
February	212	134
March	265	NA
April	189	NA
May	154	NA
June	174	NA
July	210	NA
August	157	NA
September	163	NA
October	191	NA
November	194	NA
December	195	NA
Total	2,326	NA

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While a full analysis by category has not been undertaken, the following table identifies the number of licences not renewed before they expired by category for February 2013:

Category	Licences not renewed before the expiry date Feb 19, 2013
Cigarette/Tobacco Sales	42
Eating Establishment	22
Food Shop	19
Kennel/Pet Shop/Vet	18
Lodging House	15
Mobile Home Park	11
Multiple Establishments (Food Shop, Cigarette)	3
Personal Service Facility	1
Place of Amusement	1
Public Garage	1
Residential Care Facilities	1
Total	134

Staff recommends that the late fee for all categories be increased to \$250 based on full cost recovery under current conditions. The recommended \$250 late fee includes an estimated 15 minutes of staff time to prepare and forward a monthly list of expired licences to the respective Ward Councillors.

Staff has also adjusted enforcement practices in order to better follow up on expired licences. Until recently, each expired licence was entered into the AMANDA system monthly for Officers to follow up on as their workloads permitted. However, effective February 2013, the following standard operating procedure was implemented for more efficient and effective monitoring of expired business licences:

- Municipal Law Enforcement Officer attends business 15 days after licence expiry and issues a "Notice of Non-Compliance" if the business is still operating; and,
- Municipal Law Enforcement Officer re-attends business 15 days later (30 days after expiry) and issues a Provincial Offences Notice (\$350 fine) and assesses the inspection fee if the business is still operating.

At this time, the above new procedure applies only to the Food Premises and Personal Services license categories because a charge can be laid under the Provincial Offences Act by means of a Part I ticket rather than an "Information". As the Set Fine orders

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required for tickets are obtained from the Regional Senior Judge for other license categories, they will be added to the procedure.

To provide the staff resources necessary to undertake the new procedure for consistent follow up on expired licences, it will be necessary to adjust other enforcement priorities such as overly aggressive enforcement of the Sign By-law, at least on an interim basis until the license renewal problem is corrected.

Finally, while staff concur that it would be prudent that Councillors be made aware of unlicensed businesses in their Wards, staff recommend a standard protocol for how such information might be used so as not to compromise the enforcement process and to ensure that Councillors do not unintentionally become involved in Tribunal Hearings or charges before the Courts.

In accordance with the January 15, 2013 Planning Committee direction, staff will be reporting back before the 2014 budget deliberations with a comprehensive review of the Licensing Program with justification of the previously recommended license fee increases.

ALTERNATIVES FOR CONSIDERATION

(include Financial, Staffing, Legal and Policy Implications and pros and cons for each alternative)

N/A

ALIGNMENT TO THE 2012 – 2015 STRATEGIC PLAN:

Strategic Priority #2

Valued & Sustainable Services

We deliver high quality services that meet citizen needs and expectations, in a cost effective and responsible manner.

APPENDICES / SCHEDULES

Appendix "A" to Report PED13037(a) - Protocol for Regular Sharing Information Related to Expired Business Licences with the Respective Ward Councillors.

MH/dt

Protocol for Informing Ward Councillors of Expired Business Licences in their Respective Wards

1.0 Background:

At the February 19, 2013 Planning Committee meeting, concerns were expressed regarding the number of business license holders who do not renew their licences on time. Staff was directed *"to advise the respective Ward Councillor to assist in compliance of applications"*.

2.0 Objectives:

This protocol has been develop to create an understanding of the roles and responsibilities between Ward Councillors and Municipal Law Enforcement, while ensuring compliance with all applicable by-laws.

3.0 Process:

Municipal Law Enforcement staff will provide to each Ward Councillor a monthly list via email which identifies the name, address and license category of every license holder within their Ward which did not renew their licence before it expired.

The list provided to Councillors will be intended for general information purposes only. Any Councillor requesting more detail about specific locations should do so through an inquiry to the Manager of Licensing and Permits. Any public inquiries should be directed to the Municipal Law Enforcement Section.

Councillors will not be apprised of the results of enforcement, except through a specific inquiry. However, unlicensed businesses will remain on the monthly list until such time as the business is deemed to be closed or has obtained a renewed or new licence.