

Authority: Items 11 and 12, Economic
Development and Planning Committee
Report; 10-007 (PED10063(a))
CM: April 14, 2010

Bill No. 077

CITY OF HAMILTON

BY-LAW NO. 10-077

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 various housekeeping and technical amendments to the General Provisions and Schedules 1,4,25,31 of City of Hamilton By-law No. 07-170;

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

1. Subsection 4(1) of the General Provisions of By-law No. 07-170 is amended by adding the following new paragraph (a) and re-lettering the subsequent paragraphs accordingly:
 - (a) that the applicant, except an applicant for a licence as an attendant under Schedules 1 or 4 or as a driver under Schedule 25, is the owner or operator of the business and "owner" or "operator", unless otherwise defined in the applicable Schedule, means a person who has responsibility for carrying out the business including but not limited to:
 - (i) having the right to possess or occupy the premises where the business is carried on;
 - (ii) having significant financial responsibility for the business such as responsibility for accounts payable and accounts receivable;
 - (iii) managing any employees of the business such as hiring or firing such employees;
 - (iv) having responsibility for the business under a permission granted by the federal or provincial governments such as a liquor licence (Liquor Licence Act) or a vendor's permit (Retail Sales Tax Act).

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2. Subsection 4(2) of the General Provisions of By-law No. 07-170 is amended by deleting “1(a) or (b)” and replacing it with “1(a), (b) or (c)” and by deleting “1(c)” and replacing it with “1(d)”.
3. Subsection 6(6) of the General Provisions of By-law No. 07-170 is deleted and replaced by the following new subsection 6(6):
 - 6(6)(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.
4. Subsection 8(1) of the General Provisions of By-law No. 07-170 is amended by deleting the words “respectively numbered section of Schedule 31” and replacing them with “User Fees and Charges By-law”.
5. Subsection 8(5) of the General Provisions of By-law No. 07-170 is amended by adding the following new subsection (b) and re-lettering the subsequent paragraphs accordingly:
 - (b) where the licensee ceases to be the owner or operator as defined in paragraph 4(1)(a);
6. Paragraph 8(6)(e) and Section 9 of the General Provisions of By-law No. 07-170 are amended by deleting the words “Schedule 31 of this By-law” and replacing them with “the User Fees and Charges By-law”.
7. Paragraph 8(7)(a) of the General Provisions of By-law No. 07-170 is amended by deleting “(4)” and replacing it with “(5)”.
8. Paragraph 8(7)(b) of the General Provisions of By-law No. 07-170 is deleted and

replaced by the following new paragraph:

- (b) where a licence that has expired without renewal under subsection (2) or expired under paragraphs (5)(b), (c), (d) or (e), within seven days of the date of the expiry; or

- 9. Section 11 of the General Provisions of By-law No. 07-170 is deleted and replaced with the following new section:

11(1) The Issuer of Licences upon receipt of a proper, completed application and payment of fees for a licence under this By-law shall circulate the application to such City or provincial departments or agencies as the Issuer of Licences deems necessary or as directed by Council, including but not limited to the Fire Department, Hamilton Police Services, the Planning and Economic Development Department, Public Health Services and the Public Works Department.

- (2) Departments or agencies to which the application is provided under subsection (1) shall review obtainable information and provide the Issuer of Licences with comments or compliance reports on whether the information indicates non-compliance with an applicable law which the department or agency enforces and which applies to the proposed business, and where an inspection is made, shall provide the Issuer of Licences with a report on any non-compliance found as a result of that inspection.

- (3) Where, under this By-law an applicant or licensee is to be tested, the City department responsible for the testing shall conduct the test or provide an opportunity for taking the test, and provide the Issuer of Licences with the test results.

- (4) Applicants and licensees, as a condition of obtaining or continuing to hold a licence, shall permit inspections or inquiries by representatives of the departments or agencies circulated under subsection (1) as may be reasonably requested, and shall undertake the tests referred to in subsection (3).

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- (5) Fees which are required to be paid for the making of an inspection or the conducting of a test under subsections (3) and (4) as prescribed in the User Fees and Charges By-law may be collected by the Issuer of Licences before a licence is issued or renewed.
 - (6) The Issuer of Licences may send notice of the comments or other response from the departments or agencies received under this section to the applicant or licensee.
10. Subsection 12(1)(b) of the General Provisions of By-law No. 07-170 is deleted and replaced with the following new subsection 12(1)(b):
- (b) refuse to issue the licence where the requirements for the applicant and applicable licence under this By-law, including those imposed by any Schedule or conditions to be met, are not met, or where it is determined that the application is incomplete or contains false or misleading information, any fees to be paid in respect of the licensed premises under the User Fees and Charges By-law have not been paid, fines for convictions under the Provincial Offences Act are due and unpaid, or that a prohibition or other court order made upon such conviction have not been complied with by the applicant or licensee;
11. Subsection 14(1)(c) of the General Provisions of By-law No. 07-170 is deleted and replaced with the following new subsection 14(1)(c):
- (c) unless such person pays all required fees pursuant to the User Fees and Charges By-law to the Issuer of Licences;
12. The General Provisions of By-law No. 07-170 are amended by adding the following new section 25a after section 25:
- 25a Every licence holder shall advise the Issuer of Licences immediately in writing of any change to the information required to be filed in respect of their licence

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under the General Provisions or the Schedule under which their licence is issued.

13. Section 26a of the General Provisions of By-law No. 07-170 is amended by adding the following new subsection (2.1) after subsection (2):
 - (2.1) Any cost incurred by the City in exercising its authority to inspect under subsection (2), including but not limited to the cost of any examination, tests, sampling or photographs necessary for the purposes of the inspection, shall be paid by the person who is licensed or required to be licensed under this By-law to carry on the business being inspected.
14. Section 30 of the General Provisions of By-law No. 07-170 is amended by deleting "Schedule 31 Fees".
15. Appendices "A" and "B" of the General Provisions of By-law No. 07-170 are deleted and the subsequent Appendices are re-lettered accordingly.
16. Subsection 7(1) of Schedule 1 of By-law No. 07-170 is deleted and replaced with the following new subsection:
 - (1)(a) No adult services entertainment establishment shall be located and no adult services entertainment establishment licence shall be issued except for adult services entertainment establishments in areas as permitted by subsections (2) and (3); and
 - (b) no more than two adult services entertainment establishment licences shall be issued.
17. Subsection 7(2) of Schedule 1 of By-law No. 07-170 is amended by deleting the words "Subject to subsection (3),".
18. Subsection 7(3) of Schedule 1 of By-law No. 07-170 is deleted and replaced with the following new subsection 7(3):

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- (3) Despite subsection (2), the premises at the following municipal addresses licensed and in actual use as a adult services entertainment establishment on April 14, 2010, are each deemed to be a location where one adult services entertainment establishment is permitted to operate and eligible to be licensed only for so long as the premises continues to be used for such purposes, the business owner maintains their licence and the business carried on therein is in compliance with this By-law and all other applicable law:
 - (a) 92 Barton Street East, Hamilton;
 - (b) 1038 Barton Street East, Hamilton.
19. Subsections 7(4), 7(5) and 7(6) of Schedule 1 of By-law No. 07-170 are deleted and replaced with the following new subsection 7(4):
 - (4) When an adult services entertainment establishment business owner licence expires and is not or cannot be renewed or an adult services entertainment establishment business owner licence is otherwise surrendered or revoked, then upon receipt of a complete application which otherwise complies with this By-law, the Issuer of Licences shall carry out a selection process for a licence as follows:
 - (a) the available business owner licence shall be advertised in the Hamilton Spectator newspaper and on the City's website inviting the submission of applications within a specified period of time;
 - (b) a draw shall be conducted from all of the submitted, complete applications which otherwise comply with this By-law; and
 - (c) the winner of the draw may be issued a business owner licence for an existing or new location provided that such existing or new location conforms to the criteria set out under subsection (2) and is approved by Council.

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20. Subsection 10(1) of Schedule 1 of By-law No. 07-170 is deleted and replaced with the following new subsection 10(1):
- (1)(a) No Class A adult video store shall be located and no Class A adult video store licence shall be issued except for Class A adult video stores in areas as permitted by subsections (2) and (3); and
 - (b) no more than two Class A adult video store licences shall be issued.
21. Subsection 10(2) of Schedule 1 of By-law No. 07-170 is amended by deleting the words "Subject to subsection (3),".
22. Subsection 10(3) of Schedule 1 of By-law No. 07-170 is deleted and replaced by the following new subsection 10(3):
- (3) Despite subsection (2), the premises at the following municipal addresses licensed and in actual use as a Class A adult video store on April 14, 2010, are each deemed to be a location where one Class A adult video store is permitted to operate and eligible to be licensed only for so long as the premises continues to be used for such purposes, the licence holder maintains their licence and the business carried on therein is in compliance with this By-law and all other applicable law:
 - (a) 8 Fennell Avenue West, Hamilton;
 - (b) 128 Parkdale Avenue North, Hamilton.
23. Subsections 10(4), 10(5) and 10(6) of Schedule 1 of By-law No. 07-170 are deleted and replaced with the following new subsections 10(4) and 10(5):
- (4) When a Class A adult video store licence expires and is not or cannot be renewed or a Class A adult video store licence is otherwise surrendered or revoked, then upon receipt of a complete application which otherwise complies with this By-law, the Issuer of Licences shall carry out a selection process for a licence as follows:

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- (a) the available licence shall be advertised in the Hamilton Spectator newspaper and on the City's website inviting the submission of applications within a specified period of time;
 - (b) a draw shall be conducted from all of the submitted, complete applications which otherwise comply with this By-law; and
 - (c) the winner of the draw may be issued a licence for an existing or new location provided that such existing or new location conforms to the criteria set out under subsection (2) and is approved by Council.
- (5) No licence shall be issued under subsection (4) to an applicant who has an interest, whether as a corporation, a partnership or an individual, in a current and valid Class A adult video store licence.
24. Subsection 3(1) of Schedule 4 of By-law No. 07-170 is deleted and replaced with the following new subsection 3(1):
- 3(1)(a) No body-rub establishment shall be located and no body-rub establishment licence shall be issued except for body-rub establishments in areas as permitted by subsections (2) and (3); and
- (b) no more than two body-rub establishment licences shall be issued.
25. Subsection 3(2) of Schedule 4 of By-law No. 07-170 is amended by deleting the words "Subject to subsection (3),".
26. Subsection 3(3) of Schedule 4 of By-law No. 07-170 is deleted and replaced by the following new subsection 3(3):
- (3) Despite subsection (2), the premises at the following municipal addresses licensed and in actual use as a body-rub establishment on April 14, 2010, are each deemed to be a location where one body-rub establishment is permitted to operate and eligible to be licensed only for so long as the premises continues to be used for such purposes, the business owner maintains their licence and the business carried on therein is in compliance with this By-law and all other applicable law:

(a) 893 King Street East, Hamilton;

(b) 549 Kenilworth Avenue North, Hamilton.

27. Subsections 3(4), 3(5) and 3(6) of Schedule 4 of By-law No. 07-170 are deleted and replaced with the following new subsections 3(4) and 3(5):

(4) When a body-rub establishment business owner licence expires and is not or cannot be renewed or a body-rub establishment business owner licence is otherwise surrendered or revoked, then upon receipt of a complete application which otherwise complies with this By-law, the Issuer of Licences shall carry out a selection process for a licence as follows:

- (a) the available business owner licence shall be advertised in the Hamilton Spectator newspaper and on the City's website inviting the submission of applications within a specified period of time;
- (b) a draw shall be conducted from all of the submitted, complete applications which otherwise comply with this By-law; and
- (c) the winner of the draw may be issued a business owner licence for an existing or new location provided that such existing or new location conforms to the criteria set out under subsection (2) and is approved by Council.

(5) No business owner shall have an interest, whether as a corporation, a partnership or an individual, in more than one body-rub establishment business owner licence.

28. Paragraph 1(1)(s) of Schedule 25 of By-law No. 07-170 is amended by deleting the words "Schedule "31" of By-law 07-170 (Licence and Examination Fees)" and replacing

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them with “the User Fees and Charges By-law”.

29. Subsection 14(b) is deleted and replaced with following new subsection 14(b):
 - (b) unless such person pays all required fees pursuant to the User Fees and Charges By-law to the Issuer of Licences;

30. Subsection 20(b) of Schedule 25 of By-law No. 07-170 is deleted and replaced with the following new subsection 20(b):
 - (b) unless such person pays all required fees pursuant to the User Fees and Charges Bylaw and completes and submits all application forms required under this Schedule with the Issuer of Licences;

31. Subsection 22(b) of Schedule 25 of By-law No. 07-170 is deleted and replaced with the following new subsection 22(b):
 - (b) unless such person pays all required fees pursuant to the User Fees and Charges Bylaw and completes and submits all application forms required under this Schedule with the Issuer of Licences;

32. Section 23 of Schedule 25 of By-law No. 07-170 is deleted and replaced with the following new section 23:
 23. The licence fees to be paid to the City for those licences referred to in this Schedule shall be as outlined in the User Fees and Charges By-law.

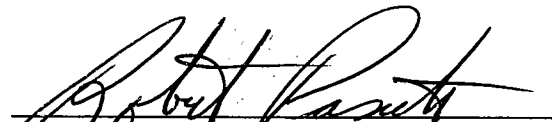
33. Subsection 49(19) of Schedule 25 of By-law No. 07-170 is deleted and replaced with the following new subsection 49(19):
 - (19) An administration fee shall be charged to a lessee of a taxicab for the late registration of a lease agreement with the Issuer of Licences in accordance with the User Fees and Charges By-law.

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34. Schedule 31 of By-law No. 07-170 is deleted.
35. This By-law comes into force on the day it is passed.

PASSED this 14th day of April, 2010.



Robert Pasuta
Acting Mayor



Rose Caterini
City Clerk