

COMMITTEE OF THE WHOLE MAY 16,2005

PROCEDURE FOR SUSPENSION OR REVOCATION OF LICENSES

RECOMMENDATION

The City Clerk in consultation with Legal Services and the Manager of Special Events, Licensing & Permits recommends:

That Council, or a Committee of Council be appointed to hear applications for the granting, suspension or revocation of licenses issued pursuant to the City's Licensing By-Law.

Economic Impact

Not Applicable

Purpose

To provide a forum for referrals by the licensing officer requesting a review either because a license should not be granted, should be revoked or should not be renewed.

Background - Analysis and Options

The Municipal Act, (hereinafter referred to as the "Act") provides municipalities with the power to pass by-laws for licensing and regulating businesses within the municipality. The power to license, regulate and govern includes the power to prohibit the carrying on of or engaging in the business without a license and the power to refuse to grant a license or to revoke or suspend a license.

Section 150 (8) of the Act outlines the powers granted to municipalities in relation to licensing. They include the following:

- a) to prohibit the carrying on of or engaging in the business without a license;
- b) to refuse to grant a license or to revoke or suspend a license;
- c) to fix the expiry date for a license;
- d) to define classes of businesses and to separately license, regulate and govern each class;
- e) to impose conditions as a requirement of obtaining, continuing to hold or renewing a license, including conditions,
 - (i) requiring a payment of license fees,
 - (ii) restricting the hours of operation of the business,
 - (iii) allowing, at any reasonable time, the municipality to inspect the places and premises used for the business and the equipment, vehicles and other personal property used or kept for hire in the carrying on of the business,
 - (iv) prohibiting places or premises used for the business to be constructed or equipped so as to hinder the enforcement of the by-law,
 - (v) requiring the premises of the business, or part of the premises, to be accessible to persons with disabilities;

- f) to impose special conditions on a business in a class that have not been imposed on all of the businesses in that class in order to obtain, continue to hold or renew a license;
- (g) to impose conditions, including special conditions, as a requirement of continuing to hold a license at any time during the term of the license;
- (h) to license, regulate or govern the place or premises used for the business and the persons carrying it on or engaged in it;
- (i) to regulate or govern the equipment, vehicles and other personal property used or kept for hire in connection with the carrying on or engaging in the business; and
- (j) to exempt any business or person from all or any part of the by-law;
- (k) without limiting anything in clauses(a) to (j), to require the payment by a licensed business of additional fees at any time during the term of the license for costs incurred by the municipality attributable to the activities of the business 2001, c. 25, s. 150 (8); 2002, c. 17, Sch. A, ss. 33 (1,2).

As the City did not have instances where revocation was necessary, the Committee was not struck. Staff are now reviewing instances where revocation may be recommended. Accordingly, the matter is coming forward. Pursuant to Section 150 (11) of the Act the exercise of power with respect to sub-sections (b), (f) and (g) cannot be delegated to the licensing officer as was previously the case. The power is in the discretion of Council and Council shall exercise its discretion as follows:

- (a) upon such grounds as are set out in the by-law ; or
- (b) upon the grounds that the conduct of any person, including the officers, directors, employees or agents of a corporation, affords reasonable cause to believe that the person will not carry on or engage in the business in accordance with the law or with honesty and integrity.

Once the licensing officer refers a matter to Council that deals with the matters referenced in Section 150 (8) subsections (b), (f) or (g), a mechanism must be in place to allow Council to exercise its decision-making authority. This could be by holding a hearing as further described below. A hearing can be before the entire Council or a Committee of Council. In Markham, a committee of 3 Councillors hears such matters. If the hearing takes place before a Committee of Council, the Committee would make a recommendation to the entire Council for a decision.

Once a matter has been referred to Council or a Committee of Council, a hearing date is set. The hearing must be public and would need to take place in the Council Chambers, as the hearing is taped and a transcript may be required.

The affected party is advised of the hearing date and may be represented by a lawyer. Disclosure is provided to the party including copies of any notes provided by the police department, any letters that may have been sent out and any other information the licensing officer relies on in referring the matter to Council.

At the hearing the City's solicitor provides an introduction by way of opening remarks to Council or its Committee. All witnesses are sworn-in by the Clerk or his/her designate. The licensing officer is the City's first witness. The solicitor representing the other party may cross-examine the

witness on the evidence given. Additional witnesses may also be called by the City followed by cross-examination.

The other party is then entitled to call evidence and cross-examination may follow by the City's solicitor.

Closing remarks are given by both parties and the City's lawyer will make a recommendation.

Council or the Committee considers the matter, a report is prepared and a recommendation made to full Council. A decision is rendered and delivered by mail to the affected party.

Based on the decision rendered the other party may apply for a judicial review of any Council decision. It is therefore imperative that any hearing be fair and complete, that full disclosure be provided prior to the hearing, that the affected party be given the opportunity to retain counsel, if desired, and that sufficient time be provided to prepare for the hearing.

Relationship to Vaughan Vision 2007

This report is consistent with the priorities previously set by Council and the necessary resources have been allocated and approved.

Conclusion

Staff recommends that Council or a Committee of Council be appointed to deal with licensing issues relating to the granting, suspension or revocation of licenses and the matters listed in subsection 150 (8), (f) and (g).

Attachments

None

Report prepared by:

Joseph A.V. Chiarelli
Manager Special Projects Licensing & Permits
Insurance-Risk Management

Respectfully submitted,

John D. Leach
City Clerk