

COMMITTEE OF THE WHOLE (WORKING SESSION) APRIL 1, 2008

LICENSING REVIEW

Recommendation

The Commissioner of Legal and Administrative Services and City Solicitor, in consultation with the Manager of Special Projects, Licensing & Permits recommends:

1. That this report be received;
2. That the Licensing By-law be amended to allow for the delegation of administrative authority to the Manager of Licensing to revoke, refuse and suspend a business license, subject to an appeal to the License Committee, as well as an amendment to the Licensing By-law for the delegation of Council's final decision-making to the License Committee, and that the criteria in the Delegation of Powers & Duties Policy be followed;
3. That amendments be made to the Licensing By-law for an inclusion in the Penalty section to:
 - reflect the new maximum fines;
 - reflect the ability to seek a maximum one year term of imprisonment for a person convicted of an offence related Adult Entertainment establishments;
 - reflect the ability to seek that Directors and Officers of corporations who knowingly permit by-law contraventions be found guilty personally;
4. That proposed amendments to the Licensing By-law to include the new licensing category of Clothing Drop Boxes;
5. That amendments be made to the Second Hand Goods section of the Licensing By-law to remove identification and transaction requirements to reflect recent caselaw;
6. That public notice is given with respect to Council's consideration of such amendments to the Licensing By-law.

Economic Impact

Licensing fees are determined based on the costs, both indirect and direct, of administering and enforcing the Licensing By-law, and are revenue neutral.

Communications Plan

Public notice summarizing the proposed amendments will be provided prior to Council's consideration of the matter, pursuant to the Notice By-law 394-2002.

Purpose

This report provides an overview of the *Municipal Act, 2001* amendments, as they relate to the Licensing By-Law. Licensing staff have undertaken an extensive review of the current Licensing By-law, policies and practices. This report outlines specific issues and provide recommendations.

Background - Analysis and Options

The background section of this report will be set out in Four Parts. Part 1 deals with the *Municipal Act, 2001* amendments. Part II deals with staff recommendations for additional areas of licensing. Part III includes a brief overview of recommended amendments to the Licensing By-Law and Part IV provides a brief overview of changes that have been made to streamline the licensing process.

PART 1 – Municipal Act 2001 Amendments

a) Expansion of Licensing Powers

The *Municipal Act, 2001* amendments relating to Licensing came into force on January 1, 2007. These amendments provide broader powers to municipalities and brought about a shift in philosophy, as licensing by-laws no longer have to be justified under one of three purposes (health and safety, nuisance control or consumer protection), nor do they require an explanation as to their rationale. Generally, a municipality may provide for a system of licensing with respect to businesses, including, among other powers, the following authority:

- To prohibit the carrying on or engaging in the business without a license;
- To refuse to grant a license or to revoke or suspend a license;
- To impose conditions as a requirement of obtaining, continuing to hold or renewing a license;
- To license, regulate or govern real and personal property used for the business and the persons carrying it on or engaged in it;
- To impose conditions in order to obtain, continue to hold or renew a license.

b) Public Notice

Section 153 of the previous *Municipal Act, 2001* required municipalities to hold public meetings prior to enacting a licensing by-law. This requirement was removed through the re-enactment of Part IV of the *Municipal Act, 2001*. Several specific 'notice' provisions have been deleted in the latest round of amendments. This is indicative of the shift away from the Province prescribing such administrative aspects of municipal government. Instead, s.270(1)(4) of the *Municipal Act, 2001* compels municipalities to "adopt and maintain policies with respect to the circumstances in which the municipality shall provide notice to the public and if notice is to be provided, the form, manner and times notice shall be given".

The City's Notice By-law 394-2002 provides for 10-day notice of the public meeting at which the Licensing By-law (amendments) are to be considered. Accordingly, such public notice shall be given.

c) Five Year Term

Historically, municipal licensing by-laws sometimes languished for years between reviews, becoming outdated, antiquated and irrelevant. In 1996, the *Municipal Act* was amended imposing a mandatory '5-year review'. Failure to review and re-enact meant that the licensing by-law would expire. This provision has now been deleted and there is no longer any mandatory review period on municipal licensing by-laws.

d) Delegation of Powers, Duties, and Decision-Making

The amendments to the *Municipal Act, 2001* expand the previous authority to delegate administrative functions and now permit Council to delegate matters of a "minor nature" to an officer, employee or agent of the municipality. Section 23.2(5) (2) cites "the power to issue and impose conditions on a license" as an example of a matter that is considered of a "minor nature".

Another example of a matter that would be considered of a “minor nature” is found at section 151(2), which allows for a municipality to summarily suspend a license for 14 days without a hearing, where the municipality believes that the continuance of the license “poses an immediate danger to the health or safety of any person or to any property”

In order to improve efficiencies, staff recommends that Council delegate to the Manager of Licensing the administrative authority to not only deal with summary suspensions but also the authority to issue licenses subject to conditions as appropriate. Applicants would have the right to appeal the Manager of Licensing’s decision to refuse a license, or the imposition of conditions, to the License Committee. Failure to appeal the decision to the License Committee would result in the Manager of Licensing’s decision to become final and binding. The revocation of licenses would continue to be dealt with by the License Committee.

Pursuant to section 23.5(3) of the *Municipal Act, 2001*, Council now has authority to delegate final decision-making authority to License Committee. Prior to the *Municipal Act, 2001* amendments, License Committee could only make recommendations after a hearing, and these recommendations would be forwarded to Council for a final decision. Staff recommends that the final decision-making authority be delegated to License Committee, so as to make the licensing process more efficient.

Staff recommends following the criteria in the Delegation of Powers and Duties Policy to effectuate these delegations.

e) Penalties for Contravention of the Licensing By-law

Fines for contraventions of the Licensing By-law are imposed upon conviction in Provincial Offences Court. According to Section 429 of the *Municipal Act, 2001*, municipalities may now “establish a system of fines for offences under a by-law”. In effect, this enables municipalities to set their own fines. Under such a system of fines, a minimum fine may be prescribed (not exceeding \$500) and maximum fines may not exceed \$100,000. As well, specific fines may be provided for continuing offences, multiple offences, escalating fines for second and subsequent convictions of the same offence, and special fines (in addition to regular fines) designed to eliminate or reduce any economic advantage or gain from contravention of the by-law. Section 425(3) of the *Municipal Act, 2001*, also allows a municipality to charge Officers and/or Directors of a corporation who knowingly contravene a licensing by-law. Staff is proposing to include such a system of fines.

f) Additional Penalties for Adult Entertainment Parlours

Section 430 of the *Municipal Act, 2001* is an entirely new section dealing with additional penalties for an adult entertainment parlour. It provides that, “A municipality may provide that a person who is convicted of an offence for a contravention of a business licensing by-law dealing with an adult entertainment establishment may be liable to a term of imprisonment not exceeding one year in addition to any applicable penalties.” Staff recommends that these amendments be made to the Licensing By-law to include this provision.

g) Administrative Monetary Penalty System

Pursuant to section 150(1)(g) of the *Municipal Act, 2001*, municipalities now have the authority to provide by by-law that a licensee pay an “administrative monetary penalty” if the licensee has failed to comply with a requirement of a municipally issued license. An administrative monetary penalty is an alternative to the traditional enforcement of by-laws by way of charges laid under the *Provincial Offences Act*. Generally speaking, under such a system, a By-law Enforcement Officer would issue a penalty notice if he/she believed that the licensee was in contravention of the Licensing By-law. If the Licensee disagreed with the penalty notice, he/she would have a right to appeal to a Hearings Officer, who would have authority to affirm, vary, or rescind the penalty

notice. This Hearings Officer would be an individual appointed by Council. Subject to the case law and the Regulations passed under the *Municipal Act, 2001*, the City has discretion to determine the amount of the administrative monetary penalty, who can be appointed as Hearings Officer, to develop its own procedures for the imposition and collection of the administrative penalty, as well as procedures to be followed during the appeal process. The administrative monetary penalty process is beneficial, as it provides an alternative to proceeding by way of charges in the backlogged Provincial Offences Court, thereby allowing the City to more efficiently enforce the Licensing By-law.

Staff are reviewing whether municipalities which choose to proceed by way of administrative penalty are subsequently unable to proceed with Charges under the *Provincial Offences Act*.

Administrative penalties may also apply to matters other than Licensing, such as parking fines. Staff will be reviewing options available to the City for the implementation of these administrative penalties and will report to Council in 2008.

h) Fees and Charges

Licensing fees are no longer limited in that there is also the ability for the City to recover costs related to capital assets (overhead) as well as costs related to administration and enforcement. This is a change from the previous provisions in the *Municipal Act, 2001*, which specifically restricted licensing fees to costs directly related to the administration and enforcement of the by-law. However, the caselaw establishes the requirement of a 'nexus' between the cost of regulating the activity and the fee charged. Staff have undertaken a review of all costs, direct and indirect, to take into account full cost recovery and will report to Council in 2008.

PART II- New Licensing Initiative

Clothing Drop Boxes

At the Council meeting of June 26, 2006 Staff were directed to review the provision of clothing drop boxes throughout the City, including investigating the possibility of introducing licensing provisions. The review was to include a differentiation between clothing drop boxes located on City owned and commercial properties and also that a differentiation be made for those that are charitable organization and for-profit organizations.

In 2006 Enforcement Services received a number of complaints associated with clothing drop boxes throughout the municipality. The complaints related to public nuisance, misleading use of clothing boxes by for-profit organizations, and the failure to keep the area immediately around such boxes clear of discarded items and other potential hazards or obstructions.

The proliferation of clothing drop boxes has been a growing concern in numerous jurisdictions. Although the public's perception is that clothing drop boxes are for charitable or non-profit purposes, this is not always the case. As well, the area around clothing drop boxes is sometimes left unkept by people leaving garbage at the boxes, including unwanted furniture and household items, debris from work sites and at times, household garbage.

Benchmarking indicates that Brampton and Toronto are the only municipalities that license clothing drop boxes. Staff at both these cities indicate they use both licensing and property standard by-laws to ensure that the organizations operating clothing drop boxes are in compliance.

Staff recommends that the Licensing By-law be amended to license the owners and lessees of clothing drop boxes subject to the following:

1. Restrict the licensing of boxes to charitable organizations.

2. Restrict the number of boxes at any particular location to two;
3. Restrict the location of the boxes to areas that will not impede pedestrian movement, traffic sightlines and not directly in the view of residential homes or prominent areas along a major road or gateway intersection;
4. Restrict such boxes to commercially zoned land, on the written consent of the landowner;
5. Operators will be required to:
 - a) display the name of the charity in a conspicuous place on the drop box in lettering no smaller than 100 mm x 75 mm and of a contrasting color;
 - b) display a notice on the drop box to indicate that all donated articles fit into the box with a prohibition on items such as paint, garbage, soiled rags, propane tanks or any like items that may create a safety hazard;
 - c) display a **pick-up** schedule of donations so as to ensure there is not an overflow or accumulation of goods left outside the drop boxes which is unsightly, and minimize pilferage of goods by passerby which affects the charity and that pick-up occurs during normal business hours so as not to disturb nearby residents.
6. Licensees would be required to maintain appropriate liability insurance coverage in the amount of no less than two million dollars naming the City of Vaughan as an additional insured.

PART III – Consequential By-law Amendments

A number of amendments to the Licensing By-law are recommended as a result of the foregoing, including amendments to the sections dealing with Administration, Applications, License Committee, License Committee Powers, License Committee Hearings, and Grounds for License Refusal, Non-Renewal, Revocation or Suspension. In addition it is recommended that the Licensing By-law be amended to reflect the new licensing area identified in Part II of this Report, as well the new penalty regime identified in Part I of this Report.

In undertaking this Licensing review, Staff have also identified other areas which would require amendments

a) Second Hand Goods – Identification Requirements

The Licensing By-law requires Second Hand Dealers to record personal information of individuals who sell them second hand goods, including the full name, sex, date of birth, address, height, and weight of the individual. To obtain this information, the Second Hand Dealer is required to view pieces of identification such as a driver's license or a passport. The Ontario Court of Appeal has recently ruled that the collection of personal information in relation to second hand goods businesses (currently required by most municipalities) conflicts with section 28 (2) of the *Municipal Freedom of Information and Protection of Privacy Act*.

Accordingly, Staff recommends that the requirements for Second Hand Goods dealers to collect and maintain personal information identifying seller and customers be deleted.

b) Limousines

At the Committee of the Whole meeting of September 4th 2007, Mr. Pawel Grezelak appeared before Committee requesting that the City's definition of limousine be amended to include sedans style vehicles as Limousines. Mr Grezelak indicated in his presentation that he had contracted with a local hotel in Vaughan to transport its clients to Pearson International Airport. He stated his

fleet consisted of a sedan which did not meet the definition of a limousine and that his clients preferred to use sedans as opposed to stretch limousines.

Historically there has been conflict between the limousine industry and the taxi industry for certain types of fares, and a general impression in the taxi industry is that the limousine industry includes some “bandit” taxicabs. Most of the taxi industry would prefer that limousines be restricted to stretch vehicles as a tighter control to reduce the competition with the cab industry, but some groups of consumers find the limousine industry more responsive to their needs.

The Licensing By-law distinguishes between the cab industry and the limousine industry by limiting limousines to:

- Provide limousine service on a pre-arranged basis;
- Rates provide for a minimum one (1) hour duration at a rate not less than fifty (50.00) dollars for the first hour;
- Definition of a “Limousine” which includes a motor vehicle altered, refurbished or modified to accommodate no less than nine (9) passengers (including drivers seat) and includes a vintage or historic vehicle.

These conditions do set clear limitations on the limousine industry. The clear distinction between the cab industry and the limousine industry should be on the basis of the service provided. A cab provides on demand service for a specific trip. A limousine provides a chauffeured vehicle for an extended engagement or special purpose. A client willing to book an hour in advance and pay a minimum of \$50 for their service should be able to order any type of vehicle they want and clearly isn't ordering cab service. On the other hand, any vehicle providing service for a particular trip on demand should be a licensed Taxi, and Luxury Taxi sedans are currently available for hire by taxi brokers within the City of Vaughan.

These distinctions must be clearly enforced, and the difficulty enforcing them creates some conflict between the taxi industry and the limousine industry, particularly those advertising as limousines, but in fact providing taxi type services. These provisions are difficult to enforce, and the cost of enforcement exceeds the \$230 per year fee currently charged for limousine license renewal.

Based on the foregoing, Staff cannot support the request that sedans be licensed as limousines, however Staff does recommend that the definition of a “Limousine” be redefined to **‘means a motor vehicle that has had a frame length modification of 72 inches or more to accommodate seating capacity for not less than eight (8) passengers. It also includes a vintage or historic vehicle that is licensed as such by the Ontario Ministry of Transportation and to which vintage plates have been issued’**. This would allow Limousine owners to accommodate the needs of particular customers without having to bear the higher expenses associated with the use of a larger limousine, and prevents an imposition on the taxi industry who are in good supply of luxury sedans for public use.

c) Other amendments

A number of administrative amendments of a minor nature are recommended as a result of Staff's review of current practices and procedures. Included will be amendments to the definition section of the Licensing By-law, minor amendments to sections dealing with inspections, general application requirements, application requirements for body rub applicants to obtain police clearance letters, refreshment vehicles – temporary licenses, tow trucks and tobacco shops.

PART IV – Streamlining of Licensing Procedures

In the past six months Staff have undertaken a comprehensive review of policies and procedures currently followed by the licensing section in an effort to improve the service level being provided to Vaughan residents and business owners. During this period staff have consulted with various municipalities both locally and outside the province to establish best practices. As a result staff have formalized a number of protocols and benchmarked a series of standard operating procedures in various areas of licensing. Some of these procedures include the following:

1. Inactive File Management;
2. Stationary License initial issuance and renewal;
3. Mobile License initial issuance and renewal;
4. Newspaper Box Permits;
5. By-law Enforcement complaints;
6. License Issuance - Computer Programs;
7. Staff and Customer Service Standards; and
8. Building / Fire Dept. processing.

In addition, staff have worked closely with other internal departments and the public to develop standardized forms and mail out / mail in procedures for license renewals. For example, the most recent renewal for taxi drivers and refreshment vehicle drivers were received through a mail in / mail out procedure. Licensees were pleased with this procedure as it was not only efficient and cost effective but it did not unduly inconvenience applicants. Staff will be implementing similar procedures for other licensing categories, where appropriate.

Supplemented upgrades have been provided for software packages used in licensing processes to complement the mail in/ mail out renewal process as well as providing for reports required by management to properly report and prioritize work conducted in the Department. Form letters for license refusals, outstanding issues, renewal letters and final billing letters have all been standardized to allow for consistency of application. Staff are also partnering with Information and Technology Department to update the City's licensing software to provide streamlined reports and standardize data input. This will provide licensing and enforcement field staff with up to date information to enable effective enforcement.

One of the most important aspects of streamlining processes is the development of a consistent approach to license issuance where the Criminal Record search and Drivers Abstract reveal areas of concern. A guideline is being developed by staff to determine when an applicant fails to qualify for a license or renewal, and should be recommended for refusal.

Relationship to Vaughan Vision 2020

The recommendations in this report are consistent with the priorities previously set by Council, in that they promote the Pursuit of Excellence in Service Delivery, they Enhance and Ensure Community Safety, Health & Wellness, and they Enhance Productivity, Cost Effectiveness and Innovation. The necessary resources have been allocated and approved.

Regional Implications

None

Conclusion

The streamlining of processes within the Licensing section has been undertaken, in part, in response to the Internal Auditor's report. The revision and development of departmental procedures, forms and the collection of reference authorities will help support a cost effective use of staff and other resources to meet public needs and foster a professional and knowledgeable image.

In accordance with the foregoing, some amendments have been identified as appropriate. Public notice is required prior to enacting such amendments.

Attachments

N/A

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