

COMMITTEE OF THE WHOLE - JUNE 2, 2009

ADMINISTRATIVE PENALTIES

Recommendation

The Commissioner of Legal and Administrative Services & City Solicitor and the Director of Enforcement Services recommend that a by-law be enacted to amend the Licensing By-law substantially in the form attached hereto.

Economic Impact

There is no economic impact as a result of this report

Communications Plan

Public notice has been given in accordance with Notice By-law 394-2002.

Purpose

The purpose of this report is to provide an opportunity for public comment concerning the creation of a system of administrative penalties for licensing matters.

Background - Analysis and Options

On April 14, 2009, Council directed Staff to implement a system of administrative penalties for licensing and parking matters, and that appropriate public notice of the proposed by-law amendments be provided prior to the summer hiatus. Further to this direction, Staff provided public notice of the proposed Licensing By-law amendments pursuant to Notice By-law 394-2002. The attached By-law will amend the Licensing By-law to create a system of administrative penalties for licensing matters. This draft has minor housekeeping amendments in comparison to the draft by-law before Council on April 14, 2009. By-laws creating a system of administrative penalties for parking matters and creating the positions of Screening Officer and Hearings Officer will be brought to Council prior to the summer hiatus.

Relationship to Vaughan Vision 2020/Strategic Plan

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

Regional Implications

As the Region operates the Courts used by the City to prosecute our Licensing By-law matters, they will be involved in the re-allocation of court time.

Conclusion

Further to Council direction, staff provided public notice pursuant to Notice By-law 394-2002 so as to provide opportunity for public comment regarding the creation of a system of administrative penalties for licensing matters. The attached by-law will amend the Licensing By-law to create such a system.

Attachments

1. Draft Licensing By-law Amendment

Report prepared by:

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Solicitor

Respectfully submitted,

Janice Atwood-Petkovski
Commissioner of Legal and Administrative Services
& City Solicitor

Tony Thompson
Director of Enforcement Services

BY-LAW NUMBER -2009

A By-law to further amend Licensing By-law 315-2005, as amended, to provide for a system of administrative penalties

WHEREAS section 151(1)(g) of the *Municipal Act, 2001*, provides that a municipality may require a person, subject to a conditions as the municipality considers appropriate, to pay an administrative penalty if the municipality is satisfied that the person failed to comply with any part of a system of licenses established by the municipality

AND WHEREAS the Council for The Corporation of the City of Vaughan, after holding a public meeting on June 2, 2009 to consider public input on proposed amendments, considers it desirable and necessary to further amend Licensing By-law 315-2005, as amended, to provide for a system of administrative penalties and administrative fees as an additional means of encouraging compliance with the Licensing By-law

NOW THEREFORE the Council of The Corporation of the City of Vaughan ENACTS AS FOLLOWS:

1. Section 2.1 of Licensing By-law 315-2005, as amended, (the "Licensing By-law") is hereby amended by adding the following definitions in alphabetical sequence:
"Hearings Officer" means a person from time to time appointed by Council pursuant to the Screening and Hearings Officer By-law.
"Screening Officer" means a person from time to time appointed by Council pursuant to the Screening and Hearings Officer By-law.
2. Section 6.1(c) of the Licensing By-law is hereby amended by replacing the phrase "compliance with this By-law or with any other requirement or prohibition imposed by any other law; or" with the phrase "accordance with the law or with honesty and integrity".
3. Section 6.1 of the Licensing By-law is hereby amended by adding the following section:
 - k) Where the applicant or licensee has failed to pay an administrative penalty imposed in accordance with this By-law.
4. The following section is hereby added to the Licensing By-law:

8.0 ADMINISTRATIVE PENALTIES

- (1) Every person that contravenes any provision of this By-law shall, upon issuance of a penalty notice in accordance with this section, be liable to pay to the City an administrative penalty in the amount of \$350.
- (2) A Licensing Officer who finds that a person has contravened any provision of this By-law may issue a penalty notice addressed to the person.

- (3) The penalty notice shall be served on the person to whom or to which it is addressed as soon as is reasonably practicable and shall include the following information:
 - i. Particulars of the contravention;
 - ii. The amount of the administrative penalty;
 - iii. Information respecting the process by which the person may exercise the person's right to request a review of the administrative penalty; and
 - iv. A statement advising that an administrative penalty will, unless cancelled or reduced pursuant to the review process, constitute a debt to the City.

- (4) The issuing Licensing Officer shall serve the penalty notice by:
 - i. Delivering it personally to the person to whom or to which it addressed;
 - ii. Sending it by registered mail to the person's last known address, which shall be deemed effective on the fifth day after it is mailed.
 - iii. Sending it by facsimile transmission to the person's last known facsimile transmission number; or
 - iv. Sending it by e-mail transmission to the person's last known e-mail address.

- (5) No Licensing Officer may accept payment in respect of the administrative penalty.

- (6) A person who is served with a penalty notice may request a review of the administrative penalty by the Screening Officer within fifteen days after the penalty notice was served.

- (7) A person may request that the Screening Officer extend the time to request a review within thirty days after the penalty notice was served at which time the administrative penalty shall be deemed to be affirmed.

- (8) The Screening Officer may extend the time to request a review of an administrative penalty where the person demonstrates extenuating circumstances that warrant the extension of time.

- (9) On a review of the administrative penalty, the Screening Officer may affirm the administrative penalty, or the Screening Officer may cancel, reduce, or extend the time for payment of the administrative penalty, including any late payment administrative fees, on the following grounds:
 - i. Where the person establishes, on a balance of probabilities, that the person did not commit the act described in the penalty notice; or
 - ii. the cancellation, reduction or extension of the time for payment of the administrative penalty, including any late payment administrative fees, is necessary to relieve undue hardship

- (10) Before making a decision under subsections 8 or 9, the Screening Officer shall conduct a meeting between the person and the Screening Officer.

- (11) A person who receives notice of the Screening Officer's decision may request a review of the Screening Officer's decision by a Hearings Officer within fifteen days of receiving notification of the Screening Officer's decision.

- (12) A person may request that the Hearings Officer extend the time to request a review the Screening Officer's decision within thirty days of notification of the Screening Officer's

decision at which time the decision of the Screening Officer's decision shall be deemed to be affirmed.

- (13) The Hearings Officer may extend the time to request a review of the Screening Officer's decision where the person demonstrates extenuating circumstances that warrant the extension of time.
- (14) Upon review of the Screening Officer's decision, the Hearings Officer may affirm the administrative penalty, or the Hearings Officer may cancel, reduce, or extend the time for payment of the administrative penalty on the following grounds:
 - a. where the person establishes, on a balance of probabilities, that the person did not commit the act described in the penalty notice; or
 - b. the cancellation, reduction or extension of the time of payment of the administrative penalty is necessary to relieve undue hardship
- (15) Before making a decision under subsections 13 or 14, the Hearings Officer shall conduct a hearing where the person, the Licensing Officer, and the Director of Enforcement Services are given an opportunity to be heard.
- (16) All hearings conducted by the Hearings Officer shall be in accordance with the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S. 22, as amended.
- (17) Any decision of the Hearings Officer is final.
- (18) Where a person has paid an administrative penalty that is then cancelled or reduced pursuant to subsections 9 or 14, the City shall refund the amount cancelled or reduced.
- (19) Where a person fails to attend a meeting with a Screening Officer or a hearing in front of a Hearings Officer, the administrative penalty shall be affirmed, and the City may levy against the person a failure to attend fee as prescribed by the City's Fees and Charges By-law, as amended from time to time.
- (20) Where an administrative penalty has been paid within fifteen days after the date that it becomes due and payable to the City, no person to whom the penalty notice was given shall be liable for an offence in respect of the contravention described in the penalty notice.
- (21) Where an administrative penalty is not paid within fifteen days after the date it becomes due and payable to the City, the City may levy against the person a late payment administrative fee as prescribed by the City's Fees and Charges By-law, as amended from time to time.
- (22) An administrative penalty that is deemed to be affirmed pursuant to subsection 7 or 19, or affirmed, reduced or in respect of which the time for payment has been extended pursuant subsection 9 or 14, the administrative monetary penalty becomes a debt to the City of each person to whom the penalty notice was given.

5. The following section is hereby added to the Licensing By-law:

8.1 DELEGATION

(1) For the purposes of subsection 23.3(4) of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, it is the opinion of Council that the powers delegated to the Chief Licensing Officer, the Screening Officer and the Hearings Officer pursuant to this By-law are of a minor nature.