

Authority: Item 15, Economic Development
and Planning Committee
Report: 09-015 (PED08117(a))
CM: July 9, 2009

Bill No. 156

CITY OF HAMILTON

BY-LAW NO. 09-156

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 housekeeping and technical amendments to the General Provisions of City of Hamilton By-law No. 07-170;

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

1. The following new subsection 4(6) is added after subsection 4(5) of the General Provisions of By-law No. 07-170:

4(6)(a) Notwithstanding any of the provisions of this By-law that apply to an applicant for a licence that is:

- (i) a partnership, the Issuer of Licences may issue a licence to a partnership provided that at least one partner, or other individual affiliated with the partnership as determined by the Issuer of Licences, satisfies such applicable provisions;**
- (ii) a corporation, the Issuer of Licences may issue a licence to a corporation provided that at least one director, officer, or other individual affiliated with the corporation as determined by the Issuer of Licences, satisfies such applicable provisions.**

- (b) Paragraph (a) does not apply to Schedules 1, 4 or 25.**

2. Subsection 14(7) of the General Provisions of By-law No. 07-170 is deleted.
3. The following new sections 26a. and 26b. are added after section 26 of the General Provisions of By-law No. 07-170:

26a.(1) A person assigned to enforce this By-law may enter on land at any reasonable time for the purpose of carrying out an inspection to determine whether or not the following are being complied with:

- (a) this By-Law;**
- (b) a direction or order made under this By-Law;**
- (c) a condition of a licence issued under this By-Law; or**
- (d) an order made under s. 431 of the *Municipal Act, 2001*.**

(2) A person assigned to enforce this By-law may, for the purposes of the inspection under subsection (1):

- (a) require the production for inspection of documents or things relevant to the inspection;**
- (b) inspect and remove documents or things relevant to the inspection for the purpose of making copies or extracts;**
- (c) require information in writing or otherwise as required by the person assigned to enforce this By-law from any person concerning a matter related to the inspection; or**
- (d) alone or in conjunction with a person possessing special or expert knowledge, make examinations or take tests, samples or photographs necessary for the purposes of the inspection.**

(3) A person assigned to enforce this By-law may undertake an inspection pursuant to an order issued by a provincial judge or justice of the peace under section 438 of the *Municipal Act, 2001* where he or she has been prevented or is likely to be prevented from carrying out an inspection under subsections (1) and (2).

(4) If a person assigned to enforce this By-law is satisfied that a contravention of this By-Law has occurred, he or she may make an order requiring the person who contravened the By-Law or who caused or permitted the contravention or the owner or occupier of the property on which the contravention occurred to discontinue the contravening activity.

(5) An order under subsection (4) shall set out:

- (a) reasonable particulars of the contravention adequate to identify the**

contravention and the location of the property on which the contravention occurred; and

(b) the date or dates by which there must be compliance with the order.

(6) If a person assigned to enforce this By-law is satisfied that a contravention of this By-law has occurred, he or she may make an order requiring the person who contravened the By-law or who caused or permitted the contravention or the owner or occupier of the property on which the contravention occurred to do work to correct the contravention.

(7) An order under subsection (6) shall set out:

(a) reasonable particulars of the contravention adequate to identify the contravention and the location of property on which the contravention occurred;

(b) the work to be completed; and

(c) the date or dates by which the work must be complete.

(8) An order to discontinue contravening activity made under subsection (4) or an order to do work made under subsection (6) may be served personally or by registered mail to the last known address of:

(a) the owner or occupier of the property where the contravention occurred; and

(b) such other persons affected by it as person assigned to enforce this By-law making the order determines.

Service by registered mail shall be deemed to have taken place five business days after the date of mailing.

(9) In addition to service given in accordance with subsection (8), an order to discontinue contravening activity made under subsection (4) or an order to do work made under subsection (6) may be served by a person assigned to enforce this By-law by placing a placard containing the order in a conspicuous place on the property where the contravention occurred.

(10) Where service cannot be given in accordance with subsection (8), sufficient service is deemed to have taken place when given in

accordance with subsection (9).

(11) Where a person does not comply with a direction or a requirement, including an order, under this By-Law to do a matter or thing, the Issuer of Licences, with such assistance by others as may be required, may carry out such direction or requirement at the person's expense.

(12) The City may recover the costs of doing a matter or thing under subsection (11) by action or by adding the costs to the tax roll and collecting them in the same manner as property taxes and such costs shall include an interest rate of 15 per cent commencing on the day the City incurs the costs and ending on the day the costs, including the interest, are paid in full.

(13) The Issuer of Licences is authorized to give immediate effect to any direction or requirement where the costs of carrying out the direction or requirement do not exceed \$10,000 and, where the costs do exceed \$10,000, as the City's Council may authorize.

26b. Pursuant to Section 431 of the Municipal Act, 2001, when a person has been convicted of an offence under this By-Law, any court of competent jurisdiction may, in addition to any other penalty or other remedy imposed, make an order prohibiting the continuation or repetition of the offence.

4. Subsection 27(2) is deleted and replaced with the following new subsection 27(2):

27(2) Every person, including every person who fails to comply with an order made under section 26a., who contravenes this By-law, except Schedules 1 and 4, and every director or officer of a corporation who concurs in such contravention by the corporation is upon conviction, guilty of an offence and liable to a fine not exceeding \$25,000.

5. Section 3 of Schedule 3 of By-law No. 07-170 is amended by deleting the word "bread" and replacing it with "bed".

6. Section 13 of Schedule 10 of By-law No. 07-170 is deleted and replaced by the following new section 13:

13. The operator shall ensure that all buildings and structures in the mobile home park, including but not limited to all mobile homes, meet all requirements of the Fire Code under the Fire Protection and Prevention Act, 1997.

7. Subsection 4(f) of Schedule 12 of By-law No. 07-170 is deleted and replaced by the following new subsection 4(f):

4(f) shall sell goods, wares or merchandise out-of-doors without written permission from the property owner of commercially-zoned lands within the City.

8. Sections 29 and 30 of Schedule 18 of By-law No. 07-170 are deleted and replaced by the following new section 29 and the following sections are renumbered accordingly:

29. The operator shall ensure that all buildings and structures in a recreational camping establishment meet all requirements of the Fire Code under the Fire Protection and Prevention Act, 1997.

9. The following new phrase is added to Paragraph 8(c)(ii) of Schedule 19 of By-law No. 07-170 after “public park”:

with the separation distance of 100 meters (328 feet) being measured from any point on a property line of the parcel of land containing the refreshment vehicle in any direction and in a straight line to the nearest point on a property line of the parcel of land containing the eating establishment, school ground, recreation ground, playground or public park;

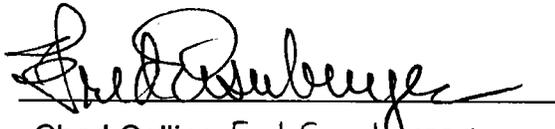
10. Subsection 37(2) of Schedule 29 of By-law No. 07-170 is amend by deleting the word “hose” and replacing it with “whose”.

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11. This By-law comes into force on the day it is passed.

PASSED and ENACTED this 9th day of July, 2009.



~~Chad Collins~~ Fred Eisenberger

Acting Mayor



Kevin C. Christenson

City Clerk