

Authority: Item 31, Planning Committee
Report: 10-001 (PED09127(d))
CM: December 15, 2010

Bill No. 314

CITY OF HAMILTON

BY-LAW NO. 10-314

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 the replacement of Schedule 21 and for the deletion of Schedule 21.1 of City of Hamilton By-law No. 07-170 and for a related housekeeping amendment to the General Provisions;

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

1. Every occurrence of the term “restaurant and food shops” in By-law No. 07-170 is deleted and replaced with the term “food premises”.
2. All licences issued under Schedule 21 which are current and valid on the day this By-law comes into force shall be deemed to be:
 - (a) current and valid under the new Schedule 21; and
 - (b) subject to all of the applicable provisions of By-law No. 07-170 and the new Schedule 21, including but not limited to expiring and being renewable as though they had been issued under the new Schedule 21.
3. All food premises licence holders shall comply with section 3 of Schedule 21 attached as Appendix A by submitting a premises plan for approval by the Issuer of Licences upon this By-law coming into force and, if a premises plan is not submitted or not approved, the Issuer of Licences may make a recommendation under section 14 of the

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General Provisions of By-law No. 07-170.

4. All licence holders whose food premises are operating as bars/nightclubs shall comply with subsections 8(a) and (b) of Schedule 21 attached as Appendix A by submitting a noise control plan and a crowd control plan for approval by the Issuer of Licences and an Electrical Safety Authority certificate and the name and telephone number of the person(s) designated as the individual responsible for the operation of the bar/nightclub upon this By-law coming into force and, if any one or more is not submitted or if any one or more of the first two are not approved, the Issuer of Licences may make a recommendation under section 14 of the General Provisions of By-law No. 07-170.
5. Schedule 21.1 of By-law No. 07-170 is deleted.
6. This By-law comes into force on the day it is passed.

PASSED this 15th day of December, 2010



R. Bratina
Mayor



R. Caterini
City Clerk

APPENDIX A

SCHEDULE 21

FOOD PREMISES

INTERPRETATION

1. In this Schedule,

“bar/nightclub” means a food premises when:

- (i) the primary purpose of the food premises is any one or more the following:
 - 1. serving alcohol to customers;
 - 2. entertaining customers by playing live or recorded music; or
 - 3. accommodating dancing by customers; and
- (ii) the food premises provides seating in a licensed area ,as set out in the food premises’ liquor licence, for less than 65% of customers who are served with food or drink;

“Certificate of Inspection” means a certificate in a form approved by the Medical Officer of Health which sets out the results of an inspection or inspections conducted under the Health Protection and Promotion Act or its regulations;

“farmer” means a farmer as defined in the Farming and Food Production Protection Act, 1998;

“food premises” means a premises where food or drink for human consumption is manufactured, processed, prepared, stored, handled, displayed, distributed, transported, sold or offered for sale, not including a premises that is:

- (i) a dwelling unit, except a dwelling unit used as a food premises home business;
- (ii) entirely exempt from R.R.O. 1990, Reg. 562 entitled “Food Premises” under section 2 of that Regulation;
- (iii) in part exempt from R.R.O. 1990, Reg. 562 entitled “Food Premises” under section 3 of that Regulation; or
- (iv) operated by a farmer, selling or offering for sale primarily produce from his or her agricultural operation;

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“Hess Village Entertainment District” means the geographic area in the City bordered by Caroline Street to the East, Main Street to the South, Queen Street to the West and King Street to North as shown in the map attached as Appendix A to this Schedule;

“Hess Village Entertainment District licence holder” means the holder of a licence under this Schedule who, under that licence, operates a bar/nightclub at premises located in the Hess Village Entertainment District;

“home business” means a use conducted as a business in a dwelling unit which is secondary to the use of the dwelling unit as a private residence;

“public health inspector” means a public health inspector employed in the Public Health Services Department;

“security guard” means a person:

- (i) whose exclusive responsibility or duty while engaged or hired by a bar/nightclub is to guard or patrol the premises for the purpose of ensuring orderly conduct and protecting persons or property; and
- (ii) who is licensed as a security guard under the Private Security and Investigative Securities Act, 2005; and

“Special Duty Police Officer” means a police officer who is a member of Hamilton Police Services.

LICENCE REQUIRED

2. No person shall operate a food premises without a licence.
3. When submitting an application for a licence, an applicant for a licence under this Schedule shall submit a detailed premises plan, drawn to scale, of the food premises that has been approved by the Issuer of Licences and the details of such premises plan shall include but are not limited to depicting the location, as applicable, of parking areas, queuing areas, walkways, smoking areas, patios, seating areas, offices, cloak rooms, dance areas, disc jockey areas, kitchen facilities, bar areas, washrooms, storage areas and entrances/exits.

4. No licence holder under this Schedule shall change or cause a change to be made to a premises plan without first obtaining the approval of the Issuer of Licences.

DUTIES OF OPERATOR

5. Every person operating a food premises shall be responsible for keeping the premises clean and orderly and maintained in all respects suitable for the purpose for which they are used, and for keeping the premises adequately lighted and ventilated.

PUBLIC HEALTH APPROVAL

6. A licence to operate a food premises shall not be issued until a public health inspector has informed the Issuer of Licences that all requirements under the Health Protection and Promotion Act and its regulations have been fully complied with.

POSTING OF CERTIFICATES OF INSPECTION

- 7.(1) Every person who operates a food premises shall permit a public health inspector to post a Certificate of Inspection in a clearly visible and conspicuous location at all entrances by which customers may enter the premises.
- (2) Where a premises described in subsection (1) does not have an entrance by which customers may enter the premises, the person who operates a food premises shall permit a public health inspector to post a Certificate of Inspection in a clearly visible and conspicuous location at the pick-up window or other location in the premises from which customers are served.
- (3) Every person who operates a food premises shall permit a public health inspector at any reasonable time to remove a Certificate of Inspection which has been posted at the premises.
- (4) When a Certificate of Inspection has been removed by a public health inspector under subsection (3), the person who operates a food premises shall not post a copy of a Certificate of Inspection or any facsimile of the certificate at any location on the premises.

DUTIES OF BAR/NIGHTCLUB OPERATORS

8. In addition to complying with sections 2 to 7 inclusive of this Schedule,

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- (a) no person shall operate a food premises as a bar/nightclub, unless upon applying for a licence and every third year thereafter, upon applying for a licence renewal, they have submitted to the Issuer of Licences a certificate from the Electrical Safety Authority that the premises complies with the Ontario Electrical Safety Code;
- (b) no person shall operate a food premises as a bar/nightclub unless, before the operation of the bar/nightclub commences, they have submitted to the Issuer of Licences:
 - (i) a noise control plan, satisfactory to the Issuer of Licences, which includes a description of:
 - 1. the maximum volume levels for music within the premises;
 - 2. the wattage of the music or sound-producing systems used on the premises; and
 - 3. the sound insulation methods or mechanisms used within the building; and
 - (ii) a crowd control plan, satisfactory to the Issuer of Licences, which includes a description of the manner in which people seeking entry or re-entry to the premises may line up outside of the premises prior to entry, including:
 - 1. the location of such line ups;
 - 2. the maximum number of people permitted to be in such line ups; and
 - 3. the procedures used to monitor the line ups; and
 - (iii) the name and telephone number of the person(s) designated as the individual responsible for the operation of the bar/nightclub who can be contacted immediately at the telephone number submitted;
- (c) every person who operates a food premises as a bar/nightclub shall, at all times when the bar/nightclub is open, ensure that:
 - (i) the bar/nightclub is operated in accordance with the noise control plan under paragraph (b)(i) and the crowd control plan under paragraph (b)(ii);
 - (ii) a person designated as the individual responsible for the operation of the bar/nightclub under paragraph (b)(iii) is at the premises;
 - (iii) the premises are staffed with at least one security guard for every 100 customers in attendance at the premises; and

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- (iv) all security guards wear identification or clothing by which they can readily be identified as security guards; and
- (d) every person who operates a food premises as a bar/nightclub shall, at all times, ensure that all areas immediately adjacent to the premises are clean and free of waste and shall install and maintain containers for the deposit of waste.

HESS VILLAGE ENTERTAINMENT DISTRICT

9. Sections 10 to 13 inclusive of this Schedule apply to Hess Village Entertainment District licence holders who operate their food premises as bar/nightclubs, as the Hess Village Entertainment District:
 - (a) has the highest concentration, in terms capacity, of bars/nightclubs, many with outdoor patios, in the City; and
 - (b) from April 15 to November 15 each year has a large number of individuals attending such bars/nightclubs resulting in:
 - (i) significant noise, litter and other nuisances, such as urination in public places in and around the Hess Village Entertainment District;
 - (ii) line-ups to enter the bars/nightclubs that pose a safety risk to pedestrian and vehicular traffic, including inhibiting the flow of traffic along Hess Street; and
 - (iii) additional issues related to nuisance and safety resulting from the large number of individuals in attendance and the consumption of alcohol, in particular when such bars/nightclubs close and these individuals exit en masse.
10. Hess Village Entertainment District licence holders shall retain a minimum of 10 Special Duty Police Officers for the Hess Village Entertainment District each Thursday, Friday and Saturday from 11:00 p.m. to 4:00 a.m. beginning April 15 and ending November 15 each calendar year.
11. Notwithstanding section 10, the Chief of Hamilton Police Services, or his or her designate,

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may:

- (a) change the commencement date of April 15 or the ending date November 15 by giving 48 hours prior notice to each Hess Village Entertainment District licence holder;
 - (b) suspend the requirement to retain Special Duty Police Officers for any day or time period where he or she decides that such Special Duty Police Officers are not required for public safety, nuisance control or public protection or where such Special Duty Police Officers are not available;
 - (c) after consultation with the Issuer of Licences, increase or decrease the number of Special Duty Police Officers by giving 30 days prior written notice to each Hess Village Entertainment District licence holder.
12. Every Hess Village Entertainment District licence holder shall contribute a pro rated share, based on the total capacity of their premises under their liquor licence, to the cost of the Special Duty Police Officers required under section 10, as may be changed under section 11, and their licence shall be conditional on such contribution being paid in full in a timely fashion.
13. Every Hess Village Entertainment District licence holder shall submit to the Issuer of Licences, when submitting an application to renew their licence or at such other times as the Issuer of Licences may require, a certificate from Hamilton Police Services evidencing their compliance with section 12.

