

Authority: Item 5, Planning and Economic
Development Committee
Report 06-014 (PED06339)
CM: August 9, 2006

BILL NO. 234

CITY OF HAMILTON

BY-LAW NO. 06-234

To Amend the City of Hamilton Licensing Code By-law 06-213 and Schedules 17 and 21 to Regulate Restaurants and Public Halls in Hess Village Entertainment District

WHEREAS it is provided in subsections 150(1) and (2) of the Municipal Act, 2001 that by-laws may be passed for licensing, regulating and governing businesses carried on within a municipality and may exercise such powers, including the imposition of conditions, for the purposes of health and safety and nuisance control;

AND WHEREAS pursuant to subsection 150(8) of the Municipal Act, 2001, the power to licence, regulate and govern a business includes the power to define classes of businesses and to separately licence, regulate and govern each class; to impose conditions as a requirement of obtaining, continuing to hold or renewing a licence, including conditions requiring payment of licence fees; 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 licence; to impose conditions, including special conditions, as a requirement of continuing to hold a licence at any time during the term of the licence; to licence, regulate or govern the place or premises used for the business and the persons carrying it on or engage in it; and to exempt any business or person from all or any part of the by-law;

AND WHEREAS pursuant to sections 128 of the Municipal Act, 2001, a municipality may prohibit and regulate with respect to public nuisances, including matters that, in the opinion of council, are or could become or cause public nuisances;

AND WHEREAS pursuant to sections 130 of the Municipal Act, 2001, a municipality may regulate matters not specifically provided for by the Municipal Act, 2001 or any other Act for purposes related to the health, safety and well-being of the inhabitants of the municipality;

AND WHEREAS there is a significant concentration in the Hess Village Entertainment District of restaurants, public halls and/or outdoor patios in a small area;

AND WHEREAS during the period of April 15 to October 31 each year (the “peak times”) there is a high concentration of persons at such restaurants, public halls and/or outdoor patios in the Hess Village Entertainment District;

AND WHEREAS there is presently a seating capacity for 3120 persons for the licensed restaurants, public halls and/or outdoor patios in the Hess Village Entertainment District;

AND WHEREAS the restaurants and outdoor patios also offer the public a place of entertainment;

AND WHEREAS the high concentration of persons in the Hess Village Entertainment District has significantly contributed to noise, litter and other nuisances;

AND WHEREAS the high concentration of persons in the Hess Village Entertainment District, during the peak times, results in line-ups to enter licensed premises;

AND WHEREAS the high concentration of persons in the Hess Village Entertainment District which is intersected by Hess Street and is adjacent to three main thoroughfares of the City, being Main Street, King Street and Queen Street, poses an increased safety risk for traffic and pedestrians and patrons travelling to, lined-up at or leaving the licensed establishments and inhibits the general traffic flow along Hess Street;

AND WHEREAS the significant concentration of restaurants, public halls and outdoor patios and the corresponding high concentration of persons in the Hess Village Entertainment District during peak times has contributed to health concerns such as outdoor urination on public and private property;

AND WHEREAS the service of alcoholic beverages at the Hess Village Entertainment District restaurants, public halls and outdoor patios has contributed to safety, health and nuisance incidents;

AND WHEREAS the concentration of such establishments has created a significant safety, health and nuisance concern;

AND WHEREAS the presence of Special Duty Police Officers increases the safety, health and comfort level of the area residents, businesses, the community and patrons who visit the Hess Village Entertainment District and contributes to the effectiveness and safety of the municipal by-law inspectors

AND WHEREAS the absence of Special Duty Police Officers would significantly increase the risk to public safety and the safety of municipal inspectors in the Hess Village Entertainment District;

AND WHEREAS it is the opinion of City Council that it is in the best interests of the public to institute adequate health and safety measures and nuisance controls for the public protection and best interests of the City;

AND WHEREAS the number of Special Duty Police Officers required for the safety of the public, the Hess Village community, municipal inspectors and the police officers taking into account the geographical layout of the Hess Village Entertainment District; the possibility of simultaneous occurrences at different locations in the Hess Village Entertainment District requiring police intervention; the number of licensed seats in a small concentrated area; and the consumption of alcohol has been determined by the Hamilton Police Service to be a minimum of eight (8);

AND WHEREAS the City of Hamilton By-Law 06-213 and Schedule 17 (Public Halls and Places of Amusement) and Schedule 21 (Restaurant and Food Shops) thereof regulate and govern the operation of restaurants and public halls;

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

1. DEFINITIONS AND INTERPRETATION

In this Schedule:

- (1) "Applicant" means a person applying for a licence or renewal thereof to operate a public hall, place of amusement, restaurant, food shop and/or outdoor patio, as defined by Schedules 17 and 21 of the City of Hamilton Licensing Code, located within the Hess Village Entertainment District;
- (2) "City of Hamilton Licensing Code" means the City of Hamilton By-Law 06-213, and, includes Schedule 17 (Public Halls and Places of Amusement) and Schedule 21 (Restaurant and Food Shops);
- (3) "City" means the City of Hamilton;
- (4) "Committee" means the Licensing Committee of the City;
- (5) "Council" means the Council of the City of Hamilton;
- (6) "Fire Protection and Prevention Act, 1997" means the Fire Protection and Prevention Act, 1997, S.O. 1997, c. 4, as amended, and any regulations thereunder;
- (7) "Food shop" means a food shop as defined in Schedule 21 of the City of Hamilton Licensing Code;
- (8) "Hess Village Entertainment District" means the area bordered by Caroline Street to the East, Main Street to the South, Queen Street to the West and King Street to the North;

- (9) "Issuer of Licences" means the Manager of Standards and Licensing for the City, or his or her designate or designates.
- (10) "licence" means a licence issued pursuant to the City of Hamilton Licensing Code to operate a public hall, place of amusement, restaurant, food shop and/or outdoor patio within the Hess Village Entertainment District;
- (11) "Licensee" means any person licensed to operate a public hall, place of amusement, restaurant, food shop and/or outdoor patio, as defined by Schedules 17 and 21 of the City of Hamilton Licensing Code and the City of Hamilton Zoning By-law No. 6593, as amended, located within the Hess Village Entertainment District;
- (12) "Municipal Act, 2001" means the Municipal Act, 2001, S.O. 2001, c. 25, as amended, and any regulations thereunder;
- (13) "occupancy capacity" means the maximum available occupancy capacity as permitted for the premises under the Fire Protection and Prevention Act, 1997;
- (14) "outdoor patio" means an outdoor patio as defined by Section 2 of the City of Hamilton Zoning By-law, as amended;
- (15) "person" includes an individual, partnership, corporation, associations, whether acting by themselves or by an officer, director, shareholder, co-partner, agent or other legal representative, and the heirs, executors, administrators or other legal representatives of a person to whom the context can apply according to law;
- (16) "place of amusement" means a place of amusement as defined by Schedule 17 of the City of Hamilton Licensing Code;
- (17) "public hall" means a public hall as defined by Schedule 17 of the City of Hamilton Licensing Code;
- (18) "restaurant" means a restaurant as defined in Schedule 21 of the City of Hamilton Licensing Code;
- (19) "Special Duty Police Officer" means a constable who is a member of the Hamilton Police Service; and
- (20) Unless the context otherwise requires, words imparting the singular number shall include the plural, and words imparting the masculine gender shall include the feminine and further, the converse of the foregoing also applies where the context so requires.

2. SCOPE and APPLICATION

- (1) The provisions of this by-law shall apply to Licensees of public halls, places of amusement, restaurants, food shops and/or outdoor patios located within the Hess Village Entertainment District.
- (2) There shall be a minimum of eight (8) Special Duty Police Officers retained for the Hess Village Entertainment District each Thursday, Friday and Saturday from 11:00 p.m. to 4:00 a.m. beginning April 15th and ending the October 31st each calendar year (the "peak times"), by the Licensees of public halls, places of amusement, restaurants, food shops and outdoor patios.
- (3) Notwithstanding subsection 2(2), the Chief of the Hamilton Police Service, or his/her designate, may amend the commencement date or ending date of the peak time period for the Hess Village Entertainment District by giving forty-eight (48) hours notice to each Licensee to which this By-law applies.
- (4) Notwithstanding subsection 2(2), the Chief of the Hamilton Police Service, or his/her designate, may suspend the requirement to retain Special Duty Officers for the Hess Village Entertainment District for any day or time period during the peak times where in the determination of the Chief of the Hamilton Police Service, or his/her designate, where such Special Duty Officers are not required for public safety, nuisance control or public protection or where such Special Duty Officers are not available.
- (5) Notwithstanding subsection 2(2), the Chief of the Hamilton Police Service, or his/her designate, may increase or decrease the number of Special Duty Police Officers who shall be retained for the Hess Village Entertainment District, after consultation with the Issuer of Licences with respect to recommended safety limits thereof, by giving thirty (30) days' prior written notice to each Licensee to which this by-law applies.
- (6) Every Applicant for a licence or renewal of a licence, as a condition to the issuance, renewal and continuance of such licence, shall submit prior to the issuance or renewal of the licence, and at such other times as the Issuer of Licences may require, a certificate from Hamilton Police Service evidencing that the establishment has complied with subsections 2(7) and (8) herein.
- (7) Every Applicant for a licence or renewal of a licence shall contribute its pro rata share, based on its occupancy capacity, of the cost of Special Duty Police Officers for the Hess Village Entertainment District as required by subsection 2(2) or, where applicable subsection 2(5), herein.
- (8) Any licence issued shall be conditional upon the Licensee maintaining its contribution to the cost of Special Duty Police Officers for the Hess Village Entertainment District in good standing and such compliance shall be required for the continuance of a licence.

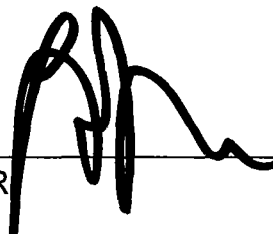
3. SUSPENSION and REVOCATION

- (1) Where the Issuer of Licences receives notification from the Hamilton Police Service that a Licensee has failed to contribute to retaining Special Duty Police Officers for the Hess Village Entertainment District, as required by this by-law, the Issuer of Licences, by written notice to the Licensee, shall suspend any licence issued for a restaurant, public hall and/or outdoor patio licence for such Licensee's establishment in the Hess Village Entertainment District.
- (2) A suspension pursuant to subsection 3(1) shall be and remain in force until such time as the Licensee has satisfied the Issuer of Licences as to his or her compliance with this by-law.
- (3) Where the Issuer of Licences suspends or revokes a licence or denies an applicant a licence or renewal thereof, written notice advising the Applicant or Licensee of such suspension, revocation or denial and the grounds therefor shall be made by the Issuer of Licences to the Applicant or Licensee, as the case may be. Upon notification of suspension of his or her licence, the Licensee shall surrender such licence to the Issuer of Licences.
- (4) Any licence which has been under suspension for a period in excess of 120 days shall be revoked by the Issuer of Licences.
- (5) The decision of the Issuer of Licences, pursuant to section 3, may be appealed to the Licensing Committee in accordance with subsection 3(6).
- (6) An Applicant or Licensee, as the case may be, is entitled to a hearing before the Committee where the Issuer of Licences has suspended, revoked or denied his or her licence or a renewal thereof, if the applicant delivers within seven (7) days after the date of service of the written notice set out in subsection 3(7), a written request for a hearing before the Committee together with the non-refundable fee set out in 3(7).
- (7) On receipt of a written request for a hearing from an Applicant or Licensee, as the case may be, together with the non-refundable hearing fee of \$50, as amended from time to time, the City's Clerk shall convene a meeting of the Committee for a purpose of a hearing of the matter and shall give the Applicant or Licensee reasonable written notice thereof.
- (8) When the Applicant or Licensee who has been given written notice of the hearing pursuant to subsections 3(7) does not attend at the appointed time and place, the Committee may proceed with the hearing in his or her absence and the applicant shall not be entitled to any further notice of the proceedings.
- (9) At the conclusion of a hearing, the Committee may:
 - (a) confirm, modify, quash or otherwise vary any action taken or recommendation made by the Issuer of Licences;
 - (b) refuse to issue or refuse to renew or revoke any licence; and
 - (c) issue a licence and attach any condition as deemed necessary.

- (10) At the conclusion of a hearing, the Committee shall, as soon as practicable, submit a written report on the hearing to Council and the report shall:
- (a) summarize the evidence and the arguments presented by the parties to the hearing;
 - (b) set out the findings of fact and record any actions taken or decisions made by the Committee; and
 - (c) set out all the actions or recommendations taken or made by the Committee and the reasons for such actions or recommendations.
- (11) The Issuer of Licences shall submit to the Council, as soon as practicable after the conclusion of a Committee hearing, the Committee's hearing report and the Council may:
- (a) confirm, modify, quash or otherwise vary any action taken or recommendation made by the Committee;
 - (b) refuse to issue or refuse to renew or revoke any licence;
 - (c) issue a licence and attach any condition as deemed necessary; and
 - (d) do any act or make any decision that it might have done had it conducted the hearing itself and upon reaching a decision the applicant or licensee shall not be entitled to a further hearing on the matter before Council.
- (12) A notice hereunder is sufficiently served if delivered personally or sent by regular mail addressed to the person to whom service is required to be made according to the Issuer of Licences records at the last address filed by such person with the Issuer of Licences. When service is made by regular mail, the service shall be deemed to be made on the third day after the day of mailing unless the person on whom service is being made establishes that he or she did not, acting in good faith, through accident, illness or other cause beyond his or her control, receive the written notice until a later date.

PASSED and ENACTED this 9th day of August, 2006.

MAYOR



CLERK

