CITY OF HAMILTON LICENSING COMMITTEE
Thursday, October 19, 2006
2:00 p.m.
Room 219, 2nd Floor
71 Main Street West, Hamilton

Present:
Councillors S. Merulla (Chair), B. Bratina, B. Kelly and D. Mitchell

Absent with Regrets:
Councillor T. Whitehead (Vice Chair) – Personal Business

Also Present:
Councillor C. Collins
Tom Redmond, Director, Building and Licensing
Susan McGrath, Manager, Standards & Licensing
Randy Charlton, Coordinator, Standards and Licensing
Judy Downey, Coordinator, Standards & Licensing
Lisa Pasternak, Senior Solicitor
Ron Sabo, Assistant City Solicitor
Constable T. Furness, Hamilton Police Service
Stephanie Paparella, Legislative Assistant, Clerk’s Office

THE CITY OF HAMILTON LICENSING COMMITTEE PRESENTS REPORT 06-008 AND RESPECTFULLY RECOMMENDS:

1. 1200043 Ontario Limited operating as the Dynes Tavern, 337 Beach Blvd., Hamilton; Eating (Restaurant) Establishment Licence (Item 6.1)
   
   (a) That the Eating (Restaurant) Establishment Licence for 1200043 Ontario Limited operating as the Dynes Tavern, located at 337 Beach Blvd., Hamilton, be amended to reflect the change in Principle, Mr. Tony DePasquale.

   (b) That the following condition be applied to the Eating (Restaurant) Establishment Licence for 1200043 Ontario Limited operating as the Dynes Tavern, located at 337 Beach Blvd., Hamilton:

Council – October 25, 2006
(i) That the Licensee comply with Zoning By-law 6593, specifically Section 18(11)(e), which states:

"No part of the land on which the outdoor patio is situate shall be used as a place of entertainment or amusement including live or recorded music or dance facilities."

(c) That the Eating (Restaurant) Establishment Licence for 1200043 Ontario Limited operating as the Dynes Tavern, located at 337 Beach Blvd., Hamilton, Ontario be suspended for two (2) days, at a time to be determined by the Issuer of Licenses.

2. The Up in Smoke Café, 227 King Street East, Hamilton; Eating (Restaurant) Establishment Licence (Item 6.3)

That an interim suspension be applied to the Eating (Restaurant) Establishment Licence for The Up in Smoke Café, located at 227 King Street East Hamilton, until such time as a Show Cause hearing may be held, with respect to this matter, in 2007.

3. Staff Update and Recommendation respecting Residential Care Facility Licence for Edgemount Manor, located at 483 Concession Street, Hamilton (Ward 7) (Item 10.2)

That the conditions, which were approved by Council on March 22, 2006, and subsequently placed on the Residential Care Facility Licence for Edgemount Manor, located at 483 Concession Street (attached as Appendix A to Report 06-008), be removed.

FOR THE INFORMATION OF COUNCIL:

(a) CHANGES TO THE AGENDA (Item 1)

The Clerk noted the following changes, which were approved:

(i) Item 4.1 - Fred Rudolph, Rudolph Law Office, on behalf of his Clients, Kaloust Kaloustian and Harbans Singh Kalsi respecting their removal from 2004/05 the Taxicab Priority Lists has, at this time, withdrawn his request to appear, on behalf of his clients. Mr. Rudolph has communicated that it is his intention to bring this matter forward at a future date.

Council – October 25, 2006
(ii) Correspondence from Mr. Omar Shabbir Khan, Solicitor for Mr. Domingos Pereira, CD Sports Bar and Restaurant, requesting a postponement of the Show Cause Hearing, noted as Item 6.2 in today’s agenda.

(iii) Added as Item 10.1 – Minutes of the September 20, 2006 Meeting of the Taxi Industry Advisory Committee

(iv) Added as Item 10.2 – Staff Update and Recommendation respecting Residential Care Facility Licence for Edgemount Manor, located at 483 Concession Street, Hamilton (Ward 7)

The October 19, 2006 City of Hamilton Licensing Committee agenda were approved, as amended.

(b) DECLARATIONS OF INTEREST (Item 2)

There were none declared.

(c) APPROVAL OF MINUTES OF PREVIOUS MEETING (Item 3)

The minutes of the September 7, 2006 meeting of the City of Hamilton Licensing Committee were approved, as presented.

(d) Fred Rudolph, Rudolph Law Office, on behalf of his Clients, Kaloust Kaloustian and Harbans Singh Kalsi respecting their removal from 2004/05 the Taxicab Priority Lists (Item 4.1)

Through an e-mail addressed to the Committee Clerk, dated October 16, 2006, Mr. Rudolph, on behalf of his clients Mr. Kaloustian and Mr. Kalsi, withdrew his request to appear before the City of Hamilton Licensing Committee, with respect to this matter.

Mr. Rudolph has communicated that it is his intention to bring this matter forward at a future date.

(e) Dynes Tavern, 337 Beach Blvd., Hamilton, Ontario; Eating (Restaurant) Establishment Licence (Item 6.1)

Mr. Tony DePasquale was sworn under Oath, prior to providing testimony.
Mr. Depasquale has submitted an application to have the Eating (Restaurant) Establishment Licence transferred from the previous owner, Mr. Michael Marchelletta, to himself and is in agreement with the conditions noted in Item 1 of these minutes.

(f) C.D. Sports Bar Restaurant, 180 Ottawa Street North, Hamilton, Ontario; Multiple Licence for Restaurant and Billiards (Item 6.2)

Both Mr. Omar Khan, Solicitor for Mr. Domingos Pereira, CD Sports Bar Restaurant, and Mr. Pereira were in attendance.

Mr. Khan noted to the Committee that his client had not received proper notification and that he himself had only been advised of the matter, by Mr. Pereira, two (2) days ago.

Staff clarified for the record that a Notice of Hearing was sent to Mr. Pereira to CD Sports Bar Restaurant, via Registered Mail (RT 405-358-904-CA), on September 28, 2006. It was also clarified that the letter had been tracked and that Canada Post had attempted to deliver the letter to the establishment, and also left notification that the registered letter could be pick up at the post office. The appellant made no attempt to retrieve the letter from Canada Post.

On October 12, 2006, the Committee Clerk tracked the status of the letter once again and noticed that it had not been picked up from the post office; staff of the Standards & Licensing Section was notified. At that time, the Manager of Standards & Licensing, as an additional courtesy to the appellant, directed an Inspector to hand deliver the Notice of Hearing to the appellant.

On October 13, 2006 at 2:25 p.m., Inspector Jim Swire attempted to hand deliver the Notice; however, there was no-one at this establishment; therefore, Inspector Swire returned to the office.

On October 16, 2006 at 3:00 p.m. a second attempt to deliver the Notice was made by Inspector Swire. There was no-one present at the establishment at that time so the Inspector taped the Notice to the door.

On October 17, 2006 at 9:45 a.m. Inspector Swire attended at the site to see if the Notice had been picked up; however, it was still on the door of the establishment. At that time, Inspector Swire noticed Mr. Pereira’s vehicle in the parking lot (Jeep), subsequently the inspector removed the Notice from the door, placed it in a plastic bag, as it was raining, and positioned it on appellant’s windshield under the windshield wiper in order to ensure that Mr. Pereira would see the Notice.

On behalf of his client, Mr. Khan requested that the hearing be postponed to November 10, 2006 in order to prepare for a proper defense.
The Committee determined that November 10, 2006, would not be an appropriate date and approved the following motion:

The Show Cause hearing respecting the Multiple License for Restaurant and Billiards at C.D. Sports Bar Restaurant, 180 Ottawa Street North, Hamilton, – Mr. Domingos Pereira, was postponed to the first meeting of the City of Hamilton Licensing Committee to be held in January 2007.

(g) **The Up in Smoke Café, 227 King Street East, Hamilton, Ontario; Eating (Restaurant) Establishment Licence (Item 6.3)**

Ms. Stephanie Spicer attended as a representative of Mr. Chris Goodwin, as he could not attend, due to his present incarceration, and his Solicitor, Mr. Peter R. Boushy, was also unable to attend as he was in attendance at another matter before the Hamilton courts. Mr. Goodwin’s release date is set for November 6, 2006.

Ms. Stephanie Spicer was sworn under Oath, prior to providing any testimony.

R. Charlton, Coordinator, Standards & Licensing, was in possession of a letter from Mr. Boushy, dated October 18, 2006, requesting that the Committee remand the Show Cause hearing date, respecting the Eating Establishment Licence for Up in Smoke Café, to any date in 2007 in order that both Mr. Goodwin and his Solicitor, Mr. Boushy, could attend before the Committee.

Ms. Spicer inquired as to what the staff recommendation would be at the upcoming hearing, should a postponement be provided. Mr. Charlton advised Ms. Spicer that it is staff’s intent to seek revocation of the Eating Establishment Licence for The Up in Smoke Café.

Staff recommended an interim suspension of the Eating Establishment Licence for Up in Smoke Café until such time as the Committee has had a chance to hear the matter. The Committee agreed and approved the motion, as set out in Item 2 of these minutes.

The following motion was also approved.

The Show Cause hearing respecting the Eating (Restaurant) Establishment Licence for Up in Smoke Café, 227 King East, Hamilton – Mr. Chris Goodwin, be postponed to the first meeting of the City of Hamilton Licensing Committee to be held in January 2007.

CARRIED
(h) Capped Rate or Fee for the Conveyance of Any Property Not Accompanied by the Passenger(s) Requesting the Delivery (PED06392) (City Wide) (Item 7.1)

Report PED06392 - Capped Rate or Fee for the Conveyance of Any Property Not Accompanied by the Passenger(s) Requesting the Delivery, was received.

(i) Doors Pub and Pizzeria, 56 Hess Street South, Hamilton – Possibility of Decreasing the Patio Capacity (PED06399) (Ward 2) (Item 7.2)

Report PED06399 – Doors Pub and Pizzeria, 56 Hess Street South, Hamilton – Possibility of Decreasing the Patio Capacity, was received.

(j) Minutes of the September 20, 2006 meeting of the Taxi Industry Advisory Committee (Item 10.1)

The Minutes of the September 26, 2006, meeting of the Taxi Industry Advisory Committee, were received.

(k) Staff Update and Recommendation respecting Residential Care Facility Licence for Edgemount Manor, located at 483 Concession Street, Hamilton (Ward 7) (Item 10.2)

Councillor Kelly expressed concerns respecting the behaviour, of some of the residents of Edgemount Manor when out in the Community as well as to pedestrians when passing by the facility.

Councillor Kelly noted that while most of the residents are respectful of the neighbourhood and surrounding residents that a few are of great concern to residents in the area. It was requested that the Councillor meet with Standards & Licensing staff as well as staff from Edgemount Manor to discuss closer supervision of those residents who are causing concern.

(l) GENERAL INFORMATION

As this was the last meeting of the City of Hamilton Licensing Committee for 2006, and the new term of Council is soon to commence, Councillor D. Mitchell thanked his fellow Committee members and staff for all their help during his time on the Committee. Noting that while he has full intentions of returning for the next term of Council, he may choose to withdraw from the Licensing Committee in order to pursue the challenges of other City committees.
Councillor B. Kelly also thanked the other members of the Licensing Committee and staff for their support and assistance while he was a member of the Committee.

(m) ADJOURNMENT (Item 8)

There being no further business, the Committee adjourned at 2:35 p.m.

Respectfully submitted,

Councillor S. Merulla, Chair

Stephanie Paparella
Legislative Assistant
October 19, 2006
The following recommendations were approved by Council at its meeting of March 22, 2006:

5. Residential Care Facility Licence, 483 Concession Street, Hamilton (PED06081) (Ward 7) (Item 5.1)

(a) That the application of 1242318 Ontario Inc., carrying on business as Edgemount Manor, located at 483 Concession Street, Hamilton, for renewal of Residential Care Facility Licence be granted conditional upon compliance with By-law 01-156, Schedule 20, specifically:

(i) Section 40(1) & (2) - Obtaining an up-to-date assessment and opinion, prior to admitting an individual;

(ii) Section 47 - (Nutrition) Ensure that tenants are served daily sufficient food described in the guidelines issued by the Medical Officer of Health;

(iii) Section 12 - Ensuring that every employee whose primary duty is the supervision of tenants participates in a continuing education.

(b) That a review be conducted in six (6) months with a report from staff to the Hamilton Licensing Committee.

(c) That failure to comply with the conditions as set out may result in a Show Cause Hearing, and will result in a Show Cause Hearing if more than two (2) occurrences of the conditions are not complied with.
Hi Randy

I was in to complete a routine inspection on this home on Sept 13/06. The following were items listed on the compliance report:

- Alphabetical list needs updating
- Brief medical history required for one tenant
- Tb skin test result needed on file for one tenant
- Ensure that the individual completing an assessment form is qualified under Schedule 20- and that the information documented within the assessment form is completed by an individual authorized by the individual dating and signing the form.

The last bullet recommendation was as a result that a non-qualified person completed an assessment- which technically is not the operators fault because- eventhough not a regulated health profesional- the person signed the form as one.

The second part of the recommendation is the result of one assessment containing 4 different handwritings on it with incorrect spellings of words/medications but technically signed by an appropriate person.

For the most part - overall- there has been a major improvement in compliance with all standards which I contribute to Rose Hrince's involvement and the new staff person, Shannon Pratt, which has been very co-operative and willing to learn on maintaining compliance and comes into compliance in a timely manner post recommendation.

Food stock no longer seems to be an issue for the last 2 inspections- staff follow menues and are mainaitning proper documentation of them.

Hope this is sufficient. Please contact me if you require anything further for your report.

Thanks - Lucy

Lucia Laroche  
RCF Nurse Inspector  
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