SUBJECT: Exempt the Need for Multiple Licences for Like Businesses Associated with the Same Establishment – Referred from City Council on August 7, 2008 (PED09053) (City Wide)

RECOMMENDATION:

(a) That, except in the case of a tobacco vendor licence:

(i) only one license fee including any inspection fee be charged for multiple licences at the same premises applied for at the same time; and,

(ii) only the administration portion of the license fee plus any inspection fee be charged for additional licences at the same premises applied for at a later date.

(b) That all applicants for new business licences be required to pay the current fee for a new licence including any zoning verification fee where required.

(c) That the by-law attached as Appendix “A” to Report PED09053, which has been prepared in a form satisfactory to the City Solicitor, be enacted by City Council.

(d) That the outstanding business item to exempt the need for multiple licences for like businesses associated with the same establishment (with the exception of tobacco vendor licences) be identified as complete and removed from the Economic Development and Planning Committee’s Outstanding Business List.
EXECUTIVE SUMMARY:

On August 7, 2008, City Council approved Item 8.1 of Committee of the Whole Report 08-026, which reads as follows:

“Whereas, Hamilton City Council in December of 2001 amended the City of Hamilton Licensing Code By-law No. 01-156 to exempt (except in the case of tobacco vendor licences) the need for multiple licences for like businesses associated with the same establishment;

And in July of 2006, enacted a subsequent Licensing By-law No. 06-213 (repealing by-law No. 01-156) which through error did not include the provision of the exemption for multiple licences;

THEREFORE BE IT RESOLVED, that the issue to exempt the need for multiple licences for like businesses associated with the same establishment (with the exception of tobacco vendor licences) be referred to the Manager of Licensing for review and a subsequent report to the Economic Development and Planning Committee.”

This report fulfils the above directive recommending that:

- the Licensing Code be amended to provide that (i) only one license fee including any inspection fee be charged for multiple licences at the same premises applied for at the same time, and (ii) only the administration portion of the license fee plus any inspection fee be charged for additional licences at the same premises applied for at a later date.

- that all businesses legally operating within the City of Hamilton prior to January 1, 2001 no longer be exempt from new license fees and/or zoning verification fees.

BACKGROUND:

As directed by City Council at its meeting of August 7, 2008 staff was asked to report back on “the issue to exempt the need for multiple licences for like businesses associated with the same establishment, with the exception of tobacco vendor licences”. The Motion states that “through error” this provision was not included in the current Licensing By-law.

Staff undertook a review of the licensing fee structure in 2001. A copy of Committee of the Whole Report PDO1104(b)/SPH01039/CS01114 is attached as Appendix “B” to this report for information. The following recommendations from that report were approved by Committee of the Whole and City Council on January 9, 2002:
“(a) That the City of Hamilton Licensing Code By-Law 01-156 be amended to reflect City Council’s direction that:

(i) Except in the case of a tobacco vendor licence, only one license fee and one inspection fee shall be charged for multiple licences in the same establishment provided the licences are applied for at the same time.

(ii) That all businesses legally operating within the City of Hamilton prior to January 1, 2001 are deemed to be existing and therefore exempt from the $50 fee for new licences.

(iii) That zoning verification fees not be applied to businesses that existed in the new City of Hamilton prior to January 1, 2001.

That in order to implement recommendations a(i), a(ii), and a(iii) reductions of revenue be reflected in both the 2001 budget exception report and the 2002 proposed budget.”

And the following two recommendations from the report were not approved:

“That Council discuss the policy of full cost recovery with respect to the fees charged for Licensing, and the issue of a phased in fee schedule to coincide with the Education Levy over a period of six years.

That City Council further discuss Option (4) – “excluding Health and Fire inspection fees and have the general levy cover the cost” (this has a budget impact of $222,300).”

**ANALYSIS/RATIONALE:**

With respect to the multiple license issue, as can be seen above, City Council approved a recommendation to charge one license fee and one inspection fee for multiple licences in the same establishment provided the licences are applied for at the same time. The issuing of multiple licences at one premises at one time requires only one site inspection by the respective departments (Fire, Traffic and Public Health) and one zoning verification to confirm that the use is permitted. Accordingly, the Parking and By-law Services Division can recover costs by charging one license fee that includes both the costs for administration and inspections.

While City Council provided direction on this matter in 2002, in reviewing this matter with City Clerk’s staff, it was determined that the amending by-law was never forwarded to City Council for approval for reasons unknown. Nevertheless, it has been the practice of the Issuer of Licences to charge only one license fee when multiple licences are issued at one premises at one time since City Council so directed in January 2002. As set out in recommendation (a)(i) of this report the attached amending by-law corrects the oversight. We have also determined that it has been the practice of the Issuer of Licences to charge only the administration portion of the license fee plus the fee for any
required inspection when additional licences are applied for at a later date. The amending by-law includes this practice as well, as set out in recommendation (a)(ii).

The August 7, 2008 motion, unlike the approved January 2002 recommendation, suggests that no license fee be charged when a current licensee seeks an additional licence, whether or not that licence is for a business at the same premises. Staff does not recommend that the licence fee be waived, in whole or in part, when the business is not at the same premises.

Each license application (with the exception of "mobile" licences, e.g. taxicab driver licences) requires the location of the business to be identified. Zoning verification confirms that the use is permitted at that location. If a licensee could hold one licence for multiple locations, it would become difficult to ensure that zoning verification and necessary inspections take place, particularly if all locations are not identified at the time application. This may result in the use of property contrary to zoning by-laws and businesses operating at locations that do not comply with the building code, property standards, fire prevention and health requirements. In addition, licensing staff might not have complete information to process license applications and, without amendment, the fees charged would not cover inspections of multiple sites. Inspections and enforcement could become difficult if licensees failed to report additional locations promptly and accurately. The Amanda database and the profiles kept by both Fire Prevention and Public Health are by location and cannot be easily cross-referenced to track single licences applying to multiple sites. Furthermore, there could be confusion with respect to adult entertainment establishments and body rub establishments which, because the number of licences and the locations are limited, could not have a single licence for more than one location.

The Finance and Administration Section has advised that there would be a significant decrease in revenue as licensees operating at multiple premises would only pay one license fee. This could only be avoided if, as noted previously, there was a fee structure in place to fully recover costs.

In summary, staff is concerned that issuing one licence for multiple locations will compromise the integrity of the Licensing Program and ultimately the public interest.

On a separate but related matter, the approved January 2002 recommendations also provided for an exemption from paying license fees and zoning verification fees for all businesses legally operating within the City of Hamilton prior to January 1, 2001. Such businesses have now had approximately seven (7) years to obtain a licence without paying the fees and, if they have not done so have been operating contrary to the Licensing Code without a licence. It is staff's position, set out in recommendation (d) of this report, that, as sufficient time has elapsed since municipal amalgamation, the exemption from paying license and zoning verification fees should end.
ALTERTINES FOR CONSIDERATION:

City Council could choose to issue multiple establishment licences to associated businesses not located at the same premises, but staff is concerned that this would compromise the integrity of the Licensing Program and ultimately the public interest.

City Council could choose to continue the fee exemption for businesses operating legally before January 1, 2001.

FINANCIAL/STAFFING/LEGAL IMPLICATIONS:

Financial - Revenue neutral with respect to recommendation (a) as the amendments to the Licensing Code reflect existing practice.

Increase in revenue with respect to ending the exemption for businesses operating legally before January 1, 2001 as they will now be required to pay the license fee including the zoning verification fee.

Staffing - N/A

Legal - Public notice advising of the Economic Development and Planning Committee meeting to consider the attached by-law to amend City By-law No. 07-170, the Licensing Code, has been given in accordance with City By-law No. 07-351, the Public Notice Policy By-law.

POLICIES AFFECTING PROPOSAL:

N/A

RELEVANT CONSULTATION:

City Clerk’s Division
Legal Services Division
Finance and Administration Section
Building Services Division
Public Health Services Division
Fire Prevention Division

CITY STRATEGIC COMMITMENT:

By evaluating the “Triple Bottom Line”, (community, environment, economic implications) we can make choices that create value across all three bottom lines, moving us closer to our vision for a sustainable community, and Provincial interests.

Community Well-Being is enhanced. ☑ Yes ☐ No
An efficient and effective business licensing program positively effect business viability and economic development, as well as public safety, health and quality of life for residents.
Environmental Well-Being is enhanced. ☑ Yes ☐ No
The recommendations are designed to ensure that appropriate businesses are operating in appropriate locations as allowed by zoning regulations.

Economic Well-Being is enhanced. ☑ Yes ☐ No
An efficient and effective business licensing program positively affect business viability and economic development, as well as public safety, health and quality of life for residents.

Does the option you are recommending create value across all three bottom lines?

☑ Yes ☐ No

Do the options you are recommending make Hamilton a City of choice for high performance public servants?
☐ Yes ☑ No

MBH/VO/kag
Attachs. (2)
CITY OF HAMILTON

BY-LAW NO. __________

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 amendments to the General Provisions and Schedule 25 of City of Hamilton By-law No. 07-170;

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

1. Section 5 of the General Provisions of By-law No. 07-170 is amended by adding the following new subsections after subsection (3):

   (4) A person issued more than one licence under this By-law for the same premises at the same time shall only be required to pay the fee for the licence with the highest fee.

   (5) A person holding a current and valid licence under this By-law who is issued a further licence for the same premises shall only be required to pay the administration portion of the fee plus any inspection fee for the further licence.

   (6) Notwithstanding subsections (4) and (5), a person issued a Tobacco Retailer licence under Schedule 27 of this By-law shall be required,
2. Subsection 2(3) of Schedule 16 is deleted.

3. Subsection 2(2) of Schedule 21 is deleted and subsection 2(1) of Schedule 21 is renumbered as section 2.

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

PASSED this day of , 200.

______________________________  ________________________________
Fred Eisenberger                Kevin C. Christenson
Mayor                            City Clerk
CITY OF HAMILTON

- RECOMMENDATION -

DATE:       November 23, 2001
            (D. Rose Ext. 4586)

REPORT TO:  Mayor and Members
            Committee of the Whole

FROM:       Lee Ann Coveyduck
            General Manager
            Planning and Development Department

            Joe-Anne Priel
            General Manager
            Social and Public Health Services

            Robert Desnoyers
            Acting General Manager
            Community Services

SUBJECT:    Review of the City of Hamilton Licensing Code By-law No. 01-156
            (PD01104(B)) (SPH01039) (CS01114) – (CITY WIDE)

RECOMMENDATION:

1. That the City of Hamilton Licensing Code By-law No. 01-156 be amended to
   reflect Council’s direction that:

   a) Except in the case of a tobacco vendor licence, only one licence fee and
      one inspection fee shall be charged for multiple licences on the same
      property (building) provided the licences are applied for at the same time.

   b) That all businesses operating within the new City of Hamilton prior to
      January 1, 2001 are deemed to be existing and therefore exempt from the
      $50 fee for new licences.

   c) That zoning verification fees not be applied to businesses that existed in
      the new City of Hamilton prior to January 1, 2001.

2. That Option (1) – full cost recovery – status quo be retained to reflect the user pay
   principle.
3. That in order to implement recommendations 1(a), 1(b) and 1(c) reductions of revenue be reflected in both the 2001 budget exception report and the 2002 proposed budget.

Lee Ann Coveyduck  
General Manager  
Planning and Development Department

Joe-Anne Priel  
General Manager  
Social and Public Health Services

Robert Desnoyers  
Acting General Manager  
Community Services

CORPORATE IMPLICATIONS:

The proposed fee structures and licensing approvals, Schedule 31 of the City of Hamilton Licensing Code By-law No. 01-156, for new and renewed licences, have been established to reflect the incurred costs for the administration and the enforcement of the City of Hamilton Licensing Code.

It is estimated that the total numbers of licences, which will be issued throughout the new City, will be approximately 9,000 to 10,000, which will generate revenue in the range of $1,500,000, which is contained within the 2001 budget.

It is very difficult to determine the cost of implementing recommendation 1(a) as it is a complex process to establish a cost for the many combinations of multiple licensing that may occur throughout the licensing of establishments throughout the new City. Staff calculated the loss of revenue for the multiple licensing combination for the combination of Food Shops with a Butcher, which will cost $11,610 for the loss of collecting $135 for the separate Butcher licensing. This is one example of a multiple licensing combination and the cost to implement the recommendation.
The cost to implement recommendation 1(b) is $222,300 (excluding non-collection of Residential Care Facility inspection fees). The cost to implement recommendation 1(b) is $69,350 and the cost to implement 1(c) is $73,360 for a total cost, excluding multiple licensing, of $143,000, which will have an impact on the $1,500,00 contained in the 2001 budget. (Appendix #10)

BACKGROUND:

On August 1, 2001, City Council approved the new harmonized licensing by-law and fee schedule, as a result of concerns raised by the Business community, City Council has requested an overview of the rationale for all licences issued and the fees charged for these licences.

The municipal licensing process permits a municipality to 'prescribe, prohibit and regulate specific establishment and mobile businesses in a timely and accurate manner from a central location in order to ensure compliance with municipal regulations and protect the safety of the public'.

The licensing function may be described as a centralized control system for the processing of a business licence application. To fulfill this responsibility the Licensing Division interfaces with various municipal departments, namely Building, Fire, Traffic, Health and Police Services. Each department provides for the necessary enforcement of its respective by-laws and/or legislation such as the Fire Code, the Building Code, Health Protection Act, and the Highway Traffic Act, etc. It is this inspection and reporting process that ensures compliance with municipal and provincial regulations and standards to protect the health and safety of the public.

Aside from the public protection aspect, licensing provides a number of valuable functions:

- Licences provide a registry of businesses, which act as a resource for other departments, agencies and ministries.

  For example, a number of Provincial Ministries including the Ministry of the Environment and the Ministry of Consumer and Commercial Relations are assisted with enforcement of provincial laws because of municipal licensing.

- A licence application triggers other departments to react, initiating inspections to ensure compliance with municipal standards.

- The licensing process also includes a screening mechanism to ensure that only applicants of good character receive a licence, which further enhances the protection of the public.

- The Licensing Committee provides an avenue to suspend or revoke business licences or impose conditions on the licensee, where the business is being
When discussing the validity of licensing various businesses, a number of factors should be considered:

- Does licensing an activity truly protect the health and safety of the public;
- Are there other agencies, departments or ministries which could regulate the activity as effectively;
- Have licence regulations/by-laws fallen out of sync with the community needs and/or the business environment, and are no longer applicable; and
- In this time of economic hardship the cost of inspecting various activities versus the number of complaints; the degree of risk to the public health and safety should be the determining factor in deciding if an activity should be licensed or not.

The new harmonized City of Hamilton Licensing Code consists of a series of schedules, which relate to specific categories of businesses operating across the city, which require a business license. The Licensing, Inspection and By-law Implementation Team was comprised of members of each municipality within the former Region of Hamilton-Wentworth. The former Town of Ancaster, Town of Dundas, Town of Flamborough, City of Hamilton and City of Stoney Creek were directly involved with the administration, issuance and enforcement of business licensing in their respective municipalities. The Township of Glanbrook did not have a business licensing by-law. The Team’s mandate was to review the existing business licensing by-laws of the aforementioned municipalities and to establish a comprehensive licensing by-law standardizing licensing categories and a fee schedule for the new City of Hamilton. The fees for the municipalities in the former Region of Hamilton-Wentworth are found in Appendix #8.

The Team reviewed the categories of businesses that each of the former municipalities licensed. Each category was reviewed with respect to its relevance and need for licensing and the needs of each respective municipality while taking into consideration both the urban and rural business environments, and past licensing enforcement areas of concern. In reviewing and establishing the regulations, the Team consulted with, and received input from the Health, Police and Fire Divisions in order to identify each Division’s area(s) of concern, their inspection and enforcement requirements, and to ensure that the proposed Licensing Code incorporated licensing schedules that reflected these requirements.

After reviewing the various by-laws of the former municipalities, the Team recommended the repeal of a number of licence categories, which include movie theatres, boat rentals, golf courses, driving schools, laundromats and dry cleaners. These categories have been excluded from the Licensing Code as they pose little or no risk to the community and to date have not generated public concern or complaints. Other agencies or ministries already regulate some of these categories such as movie theatres.
At the request of the Social and Public Health Services, a new category of licence was added entitled ‘Personal Services’ in order to address the health concerns related to blood borne diseases and ensuring that these establishments comply with the applicable Provincially mandated health regulations. Businesses to be licensed under ‘Personal Services’ include hairdressing salons, barber shops, aesthetics, tattoo parlours and body piercing.

Due to concerns and complaints from constituents and business operators, a Seasonal Produce Vendor schedule was added to the Licensing Code. This schedule addresses concerns respecting their location (permission of the landowner is required), signage, parking, obstructing road allowances and garbage and debris generated.

**Licensing Code Function:**

As Committee members are aware, revocation of the Licensing Code would have a serious negative impact on the City and its citizens. In summary the purpose of the new comprehensive or harmonized by-law is to provide for the:

- Health and safety of the public;
- Consumer protection;
- Control of nuisance type businesses that have a negative impact on our community from a social and environmental aspect;
- Protecting public interest; and
- Registration of businesses as a resource for other agencies, departments or ministries

The Licensing Code provides the City with regulations that allow the Building and Licensing Division to deal with problem individuals and establishments such as the Viking Restaurant, the Sandbar, the Syndicate and Big Lisa’s all of which had their licences revoked as a result of Licensing Committee show cause hearings. It is important to note that these show/cause hearings were initiated at the request of other departments within the City, such as Social Services, Police Services, Council members, members of the public and Ministries such as the Alcohol and Gaming Commission. Therefore, the Licensing Code provides a mechanism with which to control those businesses operating in a manner that imposes a negative impact on the community.

The Licensing Code allows the City to regulate and control individuals, and mobile and establishment businesses operating in the prescribed categories throughout the new City. The current regulations enacted in the Licensing Code allow the City:

- to control its ability to deal with problem or nuisance establishments;
- to control the number and locations of adult entertainment parlours (4) and body rub parlours (3);
• to control the display and location of adult videos and publications;

• to regulate and control the location and number of Transient Traders and Hawkers and Pedlars carrying on business throughout the new City;

• to regulate, monitor and control those businesses involved with the sale or provision of food, personal care, lodging, entertainment events and establishments and recreational establishment that directly affect the health and well being of the members of the community.

• To regulate the hours, behaviour of patrons, conditions of the property and the manner in which businesses operate;

• To provide protection to the public from unscrupulous business operators and trades people with respect to business practises, quality of workmanship, and excessive billing;

• To assist other agencies, departments and ministries in the enforcement of their respective by-laws and/or legislation, for example, the licensing of second hand goods establishments and pawnbrokers provides regulations which restrict the resale of possible stolen goods, tracking of second hand goods and recovery of stolen property; and

• To ensure that business operators are of good character by requiring police (criminal) clearances for those individuals operating within licensing categories that would put the public at risk, i.e., taxi drivers, tow truck drivers, adult entertainment attendants and operations, and residential care facility operators.

Licensing Fees – Full Cost Recovery:

The City of Hamilton current licensing fees, excluding the Health and Fire inspection fees, reflect full cost recovery for the licensing function of the Standards and Licensing Division overhead costs, which include staff salaries and benefits, and vehicle costs for Inspectors, enforcement programs, and staff training, etc. These fees were established using a detailed activity based costing exercise.

Currently, the Municipal By-law Enforcement Officers are part of a multi agency task force. In addition to investigating complaints received, the Officers pro-actively inspect residential care facilities, taxis, taxi drivers, illegal operations, problematic operators and/or establishments, unrenewed licensees, lay charges against businesses operating without a licence and/or in contravention of the Licensing Code and Zoning By-law.
Multiple Licensing:

Staff recognize the impact that the new licence and inspection fees have had on the area municipality business establishment and individuals, which may not have been licensed in the past or were only required to pay minimal licence fees; as well as the impact on other small local businesses. The new Licensing Code, which came into force on August 1, 2001, has taken into account some of these financial difficulties.

Many businesses are required to obtain multiple licences depending on the type of services they offer. For example, an individual who operates a restaurant, sells cigarettes and has arcade machines would be required to obtain three separate licences, and pay for the various health and fire inspections for each licence category.

The new harmonized By-law has, to a degree, recognized this financial hardship. By way of example, there are various classes of public garage licences (auto sales, auto body repairs, motor repairs and car washes). In the past, operators were charged a separate licence fee for each licence category depending on the nature of their business. The new Licensing Code requires that a public garage owner only pay one fee of $185 no matter what services the garage is offering. A public garage is now able to offer engine repairs, body repairs and auto sales for a single licence fee of $185. The same operator would have been charged $555 in the past. Similarly, food shops offering many different services such as a butcher, bake shop or fresh fish would require separate licences for each of these services prior to the new licensing by-law. Under the harmonized licensing by-law, a food shop operator is only required to pay one licence fee and is not charged for any additional services that he may provide. A food shop licence now lists the services provided by the operator on the licence in order to provide a mechanism to initiate inspections by other departments, but the licensee would only pay one fee of $185. Notwithstanding the changes already contained in the by-law to reduce multiple licensing, it is further recommended that any multiple licence applied for at the same time for a specific property shall only be charged one licence fee and one fire and public health inspection fee provided that the applicant applies for all licences for a specific location at the same time so one review and inspection can be undertaken.

Pursuant to the Council decision of August 22, 2001, all businesses operating within the new City of Hamilton prior to January 1, 2001 are deemed to be existing. Therefore, these businesses are exempt from the $50 administration fee for new licence applications and pay only the renewal fee of $135 as outlined in the Licensing Code Renewal Fee Schedule (Appendix #3). Also, in order to alleviate the financial burden imposed on these Area businesses, the fee for the required zoning verification is being internalized by the Division rather than burdening the licensee to pay the applicable fee established by the each of the former municipalities. The zoning verification fees are not being charged for businesses existing in the new City prior to January 1, 2001.

In 1998, Hamilton City Council passed a by-law that applicants for new licences be required to submit a plot plan satisfactory to the Building Department and obtain a Zoning Verification certificate from the Building Department before a new and transfer licence application is processed. Any applicant for a licence renewal was exempt from this process. The Zoning Verification process is based on those fees currently existing
in the former municipalities, as follows and are charged only to applicants licensing new businesses that did not exist prior to January 1, 2001:

City of Hamilton  $  80 or $120 for express (within forty-eight hours)
City of Stoney Creek: $  80
Town of Flamborough: $  75
Township of Glanbrook: $  50
Town of Dundas: $  50
Town of Ancaster: $100

Zoning Verifications are conducted on a full cost recovery. The purpose of this amendment was to deter licence applicants from investing substantial sums of money to improve a property before the use proposed had been verified as a permitted use on the subject property. The Zoning Verification also provides information respecting the applicant’s ability to comply with the Zoning By-law with respect to parking requirements, visual barriers and the permitted uses on the property. It also identifies if there are any outstanding work orders existing respecting the Property Standards By-law or Building Code Act.

Many licensed facilities such as food shops, public halls and public garages offer tobacco or cigarette sales. The Public Health Department advises that the Provincial Tobacco Control Act requires that various types of inspections and enforcement must occur on any premise that sell tobacco and that compliance with the legislation cannot be completed in one inspection. Although it may be possible to combine some of the inspection requirements under multiple licences such as food premises, tobacco vendor compliance inspections through the use of test shoppers must be completed separately from food related inspections. Therefore, the Health Department maintains that there is a need to have a separate licence and fee for cigarette and tobacco sales. The Health Department indicated that all tobacco sales vendors were inspected in 2001.

Prior to the harmonized Licensing Code the former City of Hamilton Licensing Code was amended respecting the licensing of billiard or pool tables. Previously there was a separate licence for billiard/pool tables with an accompanying licence fee of $185. The amendment provided for an exemption to licensed restaurants or public halls which had no more than two billiard/pool tables; the use of these tables was deemed to be incidental to the principle business use of the restaurant or public hall, and no billiard/pool table licence was required. This amendment is incorporated in the new Licensing Code and will affect many of the businesses from the former municipalities amalgamated into the new City of Hamilton, which required each billiard/pool table to be licensed.

Under the new Licensing Code, applicants who apply for a new or transfer ‘multiple licence’, for licence categories that require Fire inspections will only be charged one fire inspection fee. The Fire Prevention Officer will only attend the establishment for one
inspection and will inspect the entire premises at that time respecting all license categories of the multiple licence. Examples of multiple licence classifications where the Fire Department typically conducts multiple inspections are:

- Public Hall and Restaurant and Lunch Counter
- Flea Market and Lunch Counter
- Bingo Parlour and Lunch Counter
- Restaurant and Billiard/Pool Tables
- Roller Rink and Lunch Counter and Billiard/Pool Tables
- Amusement Arcade and Lunch Counter

Similarly, the Health Department would follow the same procedures and charge only one inspection fee for multiple licences. There may be other opportunities to offer businesses a single licence fee where in the past multiple licences were required.

OPTIONS

Due to the concerns expressed as a result of the enactment of the new City of Hamilton Licensing Code, staff have reviewed the following options respecting the current licensing categories and their respective fees, as follows.

Option #1: **Full Cost Recovery Status Quo** with amendments to multiple licences and inspections and new fee exemption for businesses existing prior to January 1, 2001 as outlined in recommendation (a) and (b) of this report.

Attached is the current fee schedule (Appendix #1) for new licensing applicants, which includes a $50 administration fee, and the current fee schedule (Appendix #3) for the renewal of existing licences throughout the new City.

The criteria for the current licensing structure reflects full cost recovery for administration and enforcement to ensure compliance with the business licensing by-law. Administrative input refers to the amount of time staff must incur to issue and renew all business licenses in the City accompanied by the task of maintaining all licensing records and maintaining a current status of information of each licensee in order to facilitate all licensing functions. This record maintenance function also facilitates the enforcement of each business licensing category to ensure compliance is maintained on a day to day basis, not just at the time of application or renewal, and to provide a database of information to Departments throughout the City to achieve a concerted approach to enforcement on behalf of the City and all agencies and/or ministries with concerns related to the respective licensing categories in the Licensing Code. The fees also reflect cost recovery for the administration and enforcement of licences issued throughout the City, the applicable Health inspection fee for each category of licensing and the Fire inspection fee where required.

The current provisions and regulations of the City of Hamilton Licensing Code ensure that all Health, Fire and safety standards are met and maintained within the business environment to protect public health and well being, public safety and security, and the consumption of goods in the City of Hamilton now and in the future.
Budget Impact of Option #1:

This option has a nil impact on the general levy. There is full cost recovery of administration through activity based costing. This includes salaries, benefits, overhead, car expenses, mileage, staff training, legal services, Human Resources support, Information Technology costs, etc.

Option #2: The General Levy Covers a Portion of the Costs

2(a) This option provides that the general levy pays for 50% of the fees.

Budget Impact of Option 2(a):

This would reduce application and inspection fees revenue by half and would increase the levy by $745,000 annually.

2(b) This option provides that the general levy pays for 25% of the fees.

Budget Impact of Option 2(b):

This would reduce application and inspection fees revenue by 25% and would impact the levy by $373,000 annually.

Option #3: Phasing in Licensing Fees

This option provides that the current licence fees for new and renewed licenses be phased in over a period of three years, 2002, 2003 and 2004. Therefore, in 2002 50% of the original fees would be payable, 75% of the fees would be payable and 100% of the current fees would be achieved.

Appendix #7 indicates the fees for the proposed Phase In and Total Revenues to be realized throughout the phase in period:

- **2002** – 50% Total Revenue \( \quad $745,000 \)
- **2003** – 75% Total Revenue \( \quad $1,120,000 \)
- **2004** – 100% Total Revenue \( \quad $1,500,000 \)
- **Total Revenue 2002, 2003 and 2004** \( \quad $3,365,000 \)

Budget Impact of Option #3:

As a result, throughout the subject three year period the projected Total Revenue would be $4.5 million if 100% of the license fees were collected. However, in the case of a
three year phase in, the Total Revenue would be approximately $3.4 million resulting in a loss of revenue of $1.2 million. The loss in revenue would need to be covered by the levy given that the costs of the program would exceed the revenue generated.

**Option #4: Current Licence Fees – Exclude Health and Fire Inspection Fees**

This option proposes that applicants and licensees pay only the applicable licence fee for a new or renewed licence and that no fees be charged for health and fire inspections. Alternatively, the cost recovery for the health and fire inspections would be realized from the general levy. Or, that the Health and Fire fees be collected by the respective departments following the inspection being performed at each premise to be licensed.

Due to provincial downloading, licensees requiring a Health and/or Fire inspection are currently charged an inspection fee, which was established by each of the aforementioned Divisions. In 1999 the former Region of Hamilton-Wentworth approved the Health inspection fees which were to be collected in 2000. The inspection fee is based on the level of risk of the business, and as a result, it is based on the frequency of the number of inspections required to ensure compliance with each Division’s legislation and regulations. In order to simplify and streamline matters for the business operator, the invoicing for the health and fire inspections is included in the collection of the applicable licence category fee for a new or renewed licence. Appendices #2 and #4 indicate the approvals required for a new licence and renewed licence respectively as required to comply with health, fire, traffic, parking and building regulations and/or legislation.

Since the enactment of the Licensing Code By-law, concerns have been expressed respecting the current fee schedule. If Council wishes to eliminate the health and fire inspection fees, the following impact would need to be absorbed by the general levy due to the non-collection of the aforementioned fees.

**Budget Impact of Option #4:**

**Tobacco Establishment:**

There are approximately 700 tobacco vendors requiring licensing in the City of Hamilton, for which the cost of $150 per year, per establishment, for the health inspection will provide a net levy reduction of $52,500 by the collection of approximately $105,000. This provincially mandated program of inspection is funded 50% by the Ministry of Health and Long Term Care; therefore, only 50% of the inspection fee will result in the net levy reduction.

**Personal Services:**

The $90 health inspection fee is proposed to partially recover the cost of providing inspections required under the new Mandatory Inspection requirements put forward by the Ministry of Health and Long Term Care. There are approximately 800 personal services premises in the City of Hamilton. Similarly,
the net levy reduction through the collection of this fee, $72,000 will be approximately $36,000 based on 50% funding provided by the Ministry.

Food Safety Fee:

The fees are established to partially recover the cost of providing Provincially mandated inspection programs in the City of Hamilton. Based on the estimated 4,900 food premises in the City the fees will result in a net levy reduction of approximately $133,800 to the Corporation. High risk premises such as restaurants must be inspected a minimum of three times per year. As a result the fee of $90 is three times as much as the fee for a low risk food premise such as a convenience store that must be inspected once per year. Medium risk food premises have a fee of $60 per year, as a minimum of two inspections per year is required. The Health Department indicated that 45% of the food premises were inspected in 2001.

Residential Care Facilities:

The issue of Health inspection fees for Residential Care Facilities will be addressed in a separate report to Council included on this Agenda.

Attached are the schedules indicating the license fees for new (Appendix #5) and renewed licences (Attachment #6) and exclude all health and fire inspection fees for this option.

Total Budget impact of Option #4:

Excluding non-collection of Residential Care Facility inspection fees, will be a net reduction of $222,300.

Option #5: Reduce Categories of Licensing

A review of the City of Hamilton Licensing Code By-law No. 01-156 has been completed. One of the purposes for this review was to identify possible schedules and licensing categories to be removed from the by-law. Council has already approved the deregulation of a number of licence categories, which include movie theatres, boat rentals, golf courses, driving schools, laundromats and dry cleaners. These categories have been excluded from the Licensing Code as they pose little or no risk to the community and to date have not generated public concern or complaints. Other agencies or ministries already regulate some of these categories such as movie theatres.

The issuance or a renewal of a license ensures that all appropriate departments are notified that a new business intends to begin operations or is continuing to operate. This enables the city to ensure that the best interest of the public is served though compliance to all applicable by-laws and legislation. Licenses are subject to imposed conditions, suspensions and revocation by the Licensing Committee, all of which are
control mechanisms to ensure public safety. The Licensing Committee is the instrument that assures that individuals and establishments will be dealt with if they refuse to comply not only with the licensing requirements but also with those of other departments and/or agencies such as the Police and Health. There are sometimes specific reasons why a municipality may choose to license or not to license a particular business, trade or occupation. This section will provide background as to why the categories identified by the committee for deregulation were originally included into the Licensing By-law.

Personal Service Facilities were included in the By-law at the request of Social and Public Health Services as a means to identify the location of these kinds of establishments throughout the new City, and to trigger a health inspection. The Health Department has identified personal services as, an occupation, trade or business in which communicable or blood borne diseases can be spread. Therefore, it is in the best interest of the public to have a mechanism in place, which regulates Personal Service Facilities and ensures that they are in compliance with the Health Department regulations mandated by the Province. Given that inspections are mandated, a licence should be required to ensure that zoning regulations, etc. are complied with. It puts the City in a difficult position if an inspection is approved by Health because it meets all health issues and then later it is determined that the use does not comply with the zoning by-law. This would make for a very difficult prosecution under zoning. The issuance of a licence should to hand in hand with inspections.

A second hand goods licence is a requirement in most licence by-laws throughout the province. Police Services in general, including the City of Hamilton Police, regard the licensing of Second Hand Goods establishments and pawnbroker establishments as a vital method for law enforcement agencies to track or recover stolen goods; pursue criminal investigations; prohibit individuals with criminal records from operating; identify who is the licensed operator for the purpose of charges; and other regulations which assist investigations in criminal activities. It was at the request of the Police that these categories be included in the licensing by-laws of the former municipalities and in the harmonized licensing code. The Hamilton Police are adamant that licensing these categories is an essential tool to the recovery and investigation of stolen goods.

The licensing of kennels and pet shops is a request of the Hamilton SPCA for the purpose of placing responsibility on these establishments to sell dog tags and generate revenue, which in turn becomes a control mechanism for promoting responsible dog ownership within the City Of Hamilton.

The criteria for licensing include developing a registry of businesses throughout the new City relative to the licensing categories. If the municipality undertakes only to maintain a registry without requiring these individuals or establishments to comply with the licensing, zoning, health, fire, parking, traffic and police requirements; the City is assuming a level of liability. The liability is incurred because the City has knowledge of the existence of these businesses but has no mechanism in place to ensure compliance or enforcement to protect the health and safety of the public.

Staff are currently reviewing the necessity of licensing tow truck owners and tow truck drivers, and this review will be the subject of a future report.
Survey / Best Practices

Staff undertook a survey of licensing fees and practises for municipalities of a similar population size to the City of Hamilton. These municipalities share similar licensing and enforcement concerns due to the nature of the diversity of the individuals and businesses operating within their municipalities; and as a result of these conditions, the inspection requirements within those municipalities. The City of Mississauga expects that their fees will increase as their by-law is undergoing an Activity Based Costing review similar to that of the City’s review in 1996. Attached is a synopsis of the licensing fees charged throughout municipalities such as the Cities of Oshawa, Toronto, Burlington, Richmond Hill, Windsor, Mississauga and Vaughn (Appendix #9).

The survey also indicates that the licensing fees in Mississauga, Oshawa and Burlington do not reflect full cost recovery for their municipalities; these municipalities have indicated that they will be undertaking a review of their own licensing by-laws and fees in order to address activity based costing requirements.

Public Consultation:

Staff organized two public consultation meetings, November 12, 2001 and November 19, 2001. The business community was represented by the presidents of Westdale, Dundas, International Village, Barton Street, Downtown Hamilton and the Chamber of Commerce.

They expressed concern respecting the current property tax situation experienced by businesses in the City of Hamilton and that the licensing fees are the 'icing on the cake'. They stated that they are paying three times the rate of taxes in comparison to neighbouring communities such as Burlington, Caledonia and Grimsby, without three times the rate of service. They were in support of the licensing code and licensing fees in general, but they felt that the licensing fees should reflect the licensing service(s) they are receiving and that the fees should be more in line with those charged in the City of Burlington. It was noted that the fees in the Licensing Code include the health and fire inspection fees, and not only the fees for licensing. The B.I.A. representatives reiterated that they would like parity with neighbouring communities respecting taxes and fees; and added that the health and fire inspections were done for the public good and therefore the public, via the general levy, should pay for the public good.

The issue of multiple licensing fees was a concern; however, staff assured the group that this is being addressed in this report to Committee of the Whole.

The representative from the Dundas B.I.A. questioned the necessity of licensing public garages, which the Town of Dundas had not previously required to be licensed. The Public Garage schedule addressed the selling, buying and storage, motor and body repair, car washes, gas stations and parking lots. The Licensing Code addresses the regulation of the physical layout of the lot; the storage of inoperative vehicles; control over the environmental and health issues involved in autobody repairs, particularly emissions from autobody painting; ensures that all zoning and building requirements are complied with particularly the use of the property; parking of vehicles on streets and boulevards; and drainage, lighting and signage on the site; and ensures that the area is
kept in an orderly condition without any scrap or debris laying about. In addition to the
these controls, a police clearance is required to ensure operators are of good character,
and protect consumers. The Licensing Committee provides another avenue to revoke,
suspend, or impose conditions on a license to eliminate or control problem operators.

ANALYSIS:

Although there are a number of options that can be considered on how best to pay for
the cost associated with business licensing and inspections, the Department is
recommending that the principle of user pay on a full cost recovery basis is the
preferred alternative. As such, Option #1 is being recommended by staff for Council’s
consideration.

SUSTAINABLE DEVELOPMENT:

The provisions and regulations of the City of Hamilton Licensing Code, will ensure that
standards are met and maintained within the business environment to protect public
health and well being, public safety and security, and the consumption of goods in the
City of Hamilton now and in the future.

/jd
Attach. (7)