TO: Chair and Members  
Economic Development and  
Planning Committee  

WARD(S) AFFECTED: CITY WIDE  

COMMITTEE DATE: August 9, 2010  

SUBJECT/REPORT NO:  
Establishing a “Bars and Nightclubs” Licensing Category (PED09127(c)) (City Wide)  

SUBMITTED BY:  
Tim McCabe  
General Manager  
Planning & Economic Development  
Department  

PREPARED BY:  
Vincent Ormond 905-546-2424 ext. 1358  

SIGNATURE:  

RECOMMENDATION  

(a) That Schedule 21 (Restaurant and Food Shops) of the Licence By-Law 07-170 be re-titled “Food Premises” and be further amended to:  

i) create a “Bars and Nightclubs” licensing category which would be defined as a food premises which does not provide seating for more than 80% of customers who are served food or drink and where the primary purpose of the food premises is any one or more of the following:  

   a. serving alcohol to customers,  
   b. entertaining customers by playing live or recorded music,  
   c. accommodating dancing by customers;  

ii) require that establishments licensed or applying to be licensed under the “Bars and Nightclubs” licensing category who employ bouncers, provide confirmation of compliance with the Private Security & Investigative Services Act, 2005.

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Values: Honesty, Accountability, Innovation, Leadership, Respect, Excellence, Teamwork
iii) update terminology and require:

- a “premises plan” for all establishments that sell food and drink,
- for any establishment licensed as a “Bar and Nightclub”, a crowd control plan, a noise control plan and provide the Issuer of Licenses with contact information for the person(s) responsible for the operation,

iv) exempt any “Food Premises” operated by a farmer, as defined by the by-law, and who is selling primarily produce from his/her agricultural operation, from requiring a business licence;

(b) That the amending by-law attached as Appendix “B” to Report PED09127(c), which has been prepared in a form satisfactory to the City Solicitor, be passed;

(c) That a $320 annual fee be established for a "Bars and Nightclubs" licensing category in the City’s 2010 User Fees and Charges By-law;

(d) That the Hess Village Entertainment District boundaries, at this time, not be expanded to include business properties benefiting directly from their proximity to the area in order to share in the cost of Special Duty Police Officers.

**EXECUTIVE SUMMARY**

On February 2, 2010, the Economic Development and Planning Committee tabled Report PED09127(b) recommending the creation of a “Bars and Nightclubs” licensing category “to allow a 60 day public consultation period with the public, following which staff was directed to report back, and propose a better definition of “nightclub”, having taken into account the comments received today, and those from the public consultation, as well as a consideration of the practices of other municipalities who have a separate definition of “nightclub””.

Staff has consulted with the public, and continues to recommend the creation of a “Bars and Nightclubs” licensing category to better address the higher risks (e.g. noise, nuisance, capacity, etc) associated with establishments whose primary business is serving alcohol and/or providing entertainment. After further consultation, analysis, and research into what other cities do, staff has developed a better definition which excludes establishments that provide seating for 80% of the patrons for the purpose of serving food or drink.

This report also continues to recommend no expansion of the Hess Village Entertainment District boundaries, at this time, because the changes recommended in this report, the 2009 comprehensive review of Hess Village, and the comprehensive liquor licence commenting/review process currently being developed by staff are
intended to result in better controls on current establishments within the defined Hess Village Entertainment District, and possibly reduce policing costs over time. This amending by-law also exempts farmers, as defined by the by-law, selling local produce from their agricultural operations at local markets, from requiring a business licence.

Alternatives for Consideration – See Page 7

**FINANCIAL / STAFFING / LEGAL IMPLICATIONS (for Recommendation(s) only)**

**Financial:** In accordance with the provisions of the Municipal Act, 2001, licence fee amounts are to be set to recover costs and cannot be set to raise revenue or to discourage certain businesses. Because of the higher risks associated with these establishments (and the need for increased enforcement with respect to such issues as noise, nuisance complaints, etc) staff recommend that the fee for a business licence under the “Bars and Nightclubs” licensing category be higher than the current $146.00 for eating establishments with the primary purpose of serving food.

After a detailed review, staff recommends a $320.00 licence fee for a business licence under the “Bars and Nightclubs” licensing category which will result in additional revenues in the order of $20,000.00 annually. This fee will be reassessed when a comprehensive business license fee review is undertaken for all licensing categories later this year.

**Staffing:** N/A

**Legal:** N/A

**HISTORICAL BACKGROUND (Chronology of events)**

On February 2, 2010, staff reported to the Economic Development and Planning Committee in Report PED09127(b), a copy of which is attached as Appendix “A” to this Report, on recommendations stemming from a comprehensive review of Hess Village in 2009. This Report recommended:

- the creation of a “Bars and Nightclubs” licensing category to provide for better controls of establishments with the primary purpose of serving alcohol/providing entertainment,

- taking no action on the suggestion to expand the Hess Village Entertainment District boundaries such that other businesses would share in the ongoing costs for assigning Special Duty Police Officers to patrol the area during peak times.
Committee tabled the report “to allow a 60 day public consultation period with the public, following which staff was directed to report back, and propose a better definition of “nightclub”, having taken into account the comments received today, and those from the public consultation, as well as a consideration of the practices of other municipalities who have a separate definition of “nightclub””.

**POLICY IMPLICATIONS**

N/A

**RELEVANT CONSULTATION**

Hamilton Association of Business Improvement Areas, Hess Village Community Liaison Committee, Legal Services, Public Health, Hamilton Police Service and the Alcohol and Gaming Commission of Ontario were all consulted in the preparation of this report.

In addition to the previous 1200 letters to licensed food shop restaurants, staff conducted additional public/stakeholder consultation including:

- An ad in the Hamilton Spectator and five Hamilton Community Newspapers inviting written submissions,
- A web based survey seeking input from the general public,
- Letters to 80 establishments operating as a “bar”, “lounge”, “nightclub”, “tavern”, “pub”, “dance club”, etc throughout the City seeking comments, and a second letter to the 80 establishments inviting them to a public meeting on May 10 2010,
- Staff also contacted 2 commercial insurance brokers with respect to the concerns related to possible increased insurance premiums associated with a “Bars and Nightclubs” licensing category.

**ANALYSIS / RATIONALE FOR RECOMMENDATION**

(include Performance Measurement/Benchmarking Data, if applicable)

The following summarizes and responds to concerns raised at the February 2, 2010, Economic Development and Planning Committee meeting and during the subsequent public consultation. The detailed results of the public/stakeholder consultation are contained in Appendix “C” to this Report.

a. It is clearly evident that there is a wide range of opinion, but no clear consensus whatsoever to suggest a definitive differentiation between a restaurant and a bar/nightclub.
Subject: Establishing a “Bars and Nightclubs” Licensing Category (PED09127(c))
(City Wide) - Page 5 of 7

Staff researched the practices of other Ontario municipalities as detailed in Appendix “D”. Again there is no consistent approach by municipalities which include a “Bars and Nightclubs” licensing category. However, some cities use seating capacity (in addition to serving alcohol, entertaining customers, and dancing by customers) to differentiate between a restaurant and a bar/nightclub, and staff feel that this would be the most appropriate criteria to use.

b. At the February 2, 2010 Economic Development and Planning Committee meeting a concern was expressed about increased insurance costs to businesses falling under the recommended “Bars and Nightclubs” licensing category.

Staff contacted 2 local commercial insurance brokers and Risk Management also researched the matter. Staff were informed that insurance rates are established through gross alcohol sales and operating history of the establishment rather than a municipal licence. Therefore, the creation of a “Bars and Nightclubs” licensing category would not affect business insurance costs.

c. One concern raised at the stakeholder meetings was with respect to the staff recommendation to require posting information identifying the “person responsible” for operating the establishment and possible safety issues/retribution related to unruly patrons being removed from the premises.

While staff were recommending that this information be posted to assist enforcement and public complaints, staff agree that this could be a valid personal safety concern for an operator and, therefore, have altered the recommendation to require the information be provided to the Issuer of Licences and need not be posted in the establishment.

d. Staff also received letters from 3 organizations in response to the request as advertised in the Hamilton Spectator and the local community newspapers:

1) The first letter was from the Hamilton Musicians’ Guild Local 293 expressing concern that the creation of a “Bars and Nightclubs” licensing category could result in loss of venues for musicians because a licencee may choose to discontinue offering live entertainment to avoid being classed as a “Bar/Nightclub”.

The creation of the “Bars and Nightclubs” licensing category would not determine or limit the ability of operators to have entertainment. Currently limitations on entertainment are determined through the various zoning by-laws.

It is staff’s opinion that the additional controls/requirements should not place
any undue burden on operators but are necessary to better address the higher risks associated with establishments whose primary business is serving alcohol and/or providing entertainment.

2) The second letter was from the Ainslie Wood/Westdale Community Association neighbourhood community group supporting the creation of the “Bars and Nightclubs” licensing category due to ongoing community concerns and an increase in the number of licensed establishments within their community.

3) The third letter was from the Hamilton Chamber of Commerce expressing the opinion that:

i. the definition of a bar/nightclub should include the hours of operation specifically limited to evening hours and with little or no food service available, i.e. through an active kitchen facility;
ii. the fees for this new category should be phased in over 3 years; and
iii. the requirements for noise, crowd control and electrical inspections be simplified through the inspection process and not be required every year.

Staff are of the opinion that creating a definition based on hours of operation may not adequately capture establishments that change from one venue type to another during the course of an evening (restaurant to nightclub) as the demographics of the patrons change. The recommended definition does, however, capture food service by stating that the primary purpose is the service of alcohol.

Phasing in a licensing fee increase of $174.00 ($146.00 to $320.00) over 3 years would not reflect the principle of cost recovery, because more administrative and enforcement efforts are directed at establishments whose primary purpose is serving alcohol or providing entertainment. However, as previously noted, the recommended $320 licence fee will be reassessed when a comprehensive business licence fee review is undertaken for all licensing categories later this year.

The third point relating to inspections is not accurate as an Electrical Safety Association certificate is only required every three years. The other requirements relating to noise, crowd control and a premises plan would be required as part of the application and updated prior to changes being implemented by the operator.

e) An online survey was also included as part of the public/stakeholder consultation. Only 6 responses were received and most of the points are already addressed in this Report.
One issue which arose since the last Report, was the issue of farmers operating in local markets requiring a business licence.

There has been an increase in the number of local markets offering locally grown produce. The definition of a “Farmer’s Market” in the Health Promotion and Protection Act (HPPA) created a situation where farmers are exempt from requiring a business licence only when they make up 51% or more of the market stallholders. Staff recommend amending the by-law to exempt any farmer, as defined by the by-law, selling local produce from their agricultural operations at local markets, from requiring a business licence, such that market stallholders who are “true farmers” will be treated equitably across the City regardless of the market makeup.

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<thead>
<tr>
<th>ALTERNATIVES FOR CONSIDERATION</th>
<th>(include Financial, Staffing, Legal and Policy Implications and pros and cons for each alternative)</th>
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Committee/Council could apply a different definition to define a “bar/nightclub” for the purpose of requiring a business licence.

Committee/Council could establish a different licence fee which may/may not reflect cost recovery.

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<th>CORPORATE STRATEGIC PLAN (Linkage to Desired End Results)</th>
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**Healthy Community** - the recommendations are intended to address the higher risks associated with establishments whose primary business is serving alcohol and/or providing entertainment.

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<th>APPENDICES / SCHEDULES</th>
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Appendix “A” to Report PED09127(c) – Report PED09127(b)
Appendix “B” to Report PED09127(c) – Amending By-law - Schedule 21
Appendix “C” to Report PED09127(c) – Public/stakeholder consultation and input.
CITY OF HAMILTON

PLANNING AND ECONOMIC DEVELOPMENT
Parking and By-law Services Division

TO: Chair and Members
Economic Development and Planning Committee

WARD(S) AFFECTED: CITY WIDE

COMMITTEE DATE: February 2, 2010

SUBJECT/REPORT NO:
Establishing a "Bars and Nightclubs" Licensing Category (PED09127(b)) (City Wide)

SUBMITTED BY:
Tim McCabe
General Manager
Planning and Economic Development

PREPARED BY:
Marty Hazell 905-546-2424 Ext 4588
Vincent Ormond 905-546-2424 Ext 1358

SIGNATURE:

RECOMMENDATION:

(a) That Schedule 21(Restaurant and Food Shops) of the Licence By-Law 07-170 be re-titled “Food Premises” and be further amended to:

   i) create an appropriate licensing category for “bars and nightclubs”,

   ii) require that establishments licensed or applying to be licensed under the “bars and nightclubs” category who employ bouncers, provide confirmation of compliance with the Private Security and Investigative Services Act, 2005,

   iii) update terminology and require:
       • a “premises plan” for all establishments that sell food and drink
       • a crowd control plan, noise control plan and posting contact information of the person responsible for establishments licensed under the “Bars and Nightclubs” category;

(b) That the amending By-law attached as Appendix “A” to Report PED09127(b), which has been prepared in a form satisfactory to the City Solicitor, be passed;

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Values: Honesty, Accountability, Innovation, Leadership, Respect, Excellence, Teamwork
(c) That a $320 fee be established for a "Bar and Nightclub" licence and added to the 2010 User Fees and Charges By-law when the By-law is enacted by City Council upon completion of the budget process;

(d) That the Hess Village Entertainment District boundaries, at this time, not be expanded to include business properties benefiting directly from their proximity to the area in order to share in the cost of Special Duty Police Officers.

**EXECUTIVE SUMMARY**

City Council at its February 11, 2009 meeting, directed staff to report back to the Committee of the Whole in three month's time on matters related to Hess Village including:

a) Regulation of Hours  
b) Regulation of Capacity  
c) Policing Strategies  
d) By-law defining the review of Hess Village Entertainment District with recommendations  
e) Review of a possible interim control by-law for Hess Village  
f) Review the potential of licensing/regulating bouncers

A multi-disciplinary staff team was established comprised of representatives from Downtown & Community Renewal; Zoning By-law Reform; Parking & By-law Services; Building Services; Public Works; Hamilton Police Services; Fire Prevention Bureau; Legal Services; and, Economic Development & Real Estate. The resulting comprehensive staff report (PED09127) was presented to Committee of the Whole on May 21, 2009, and included over 30 recommendations to address the various issues associated with the operation of Hess Village.

Three of the approved recommendations were for staff to report back to the Economic Development and Planning Committee after undertaking further investigation into expanding the Hess Village Entertainment District boundaries; amending the Licence By-law to recognize different classes of entertainment establishments for business licensing purposes, and requiring licence applicants who employ security guards including bouncers to provide confirmation that they are in good standing under the Private Security and Investigative Services Act, 2005, prior to the issuance or renewal of their licences.

The above three issues are addressed in detail in this staff report. Staff is recommending the creation of a "Bar and Nightclub" licensing category to provide for better controls of establishments with the primary purpose of serving alcohol/providing entertainment. The establishment of a "Bar and Nightclub" licensing category will allow

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staff to finalize details and report back to the Economic Development and Planning Committee with recommendations for a City-wide comprehensive commenting/review process for liquor licence applications.

Alternatives for Consideration – See Page 7

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<tr>
<td>Financial: Establishing a $320.00 fee for establishments licensed under the &quot;Bar and Nightclub&quot; category will result in additional revenues in the order of $25,000.00 annually.</td>
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<tr>
<td>Staffing: N/A</td>
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<td>Legal: N/A</td>
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HISTORICAL BACKGROUND (Chronology of events)

The following recommendations of Report PED09127, regarding Hess Village, were presented to Committee of the Whole on May 21, 2009, and are addressed in this report:

f) iii) That Parking and By-law Services Division staff be directed to report back to the Economic Development & Planning Committee on expanding the area defined as the Hess Village Entertainment District to include business properties benefiting directly from their proximity to the area, so they share in the cost of Hess Village Special Duty Police Officers.

f) iv) That Parking and By-law Services Division staff be directed to review restaurants and public halls and consider an amendment to Licensing Code By-law 07-170 recognizing different classes of entertainment establishments for business licensing purposes and report on same to the Economic Development and Planning Committee.

g) ii) That Parking and By-law Services Division staff be directed to report to the Economic Development and Planning Committee on amending the Licensing Code By-law 07-170 to require that Schedule 17 and Schedule 21 business licence applicants who employ security guards including bouncers provide the Issuer of Licences, prior to the issuance or renewal of their licences, with confirmation that they are in good standing under the Private Security and Investigative Services Act, 2005.

POLICY IMPLICATIONS

N/A

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RELEVANT CONSULTATION

Staff met with the Hess Village Liaison Committee and also attended the Safer Bar workshop (facilitated by Public Health) to explain the changes recommended in this report. In addition, staff has reviewed the changes with Alcohol & Gaming Commission of Ontario representatives involved in enforcing the Liquor Licence Act, as well as the Hamilton Police Service, Public Health, Legal Services and other staff in the Planning and Economic Development Department.

ANALYSIS / RATIONALE FOR RECOMMENDATION

(include Performance Measurement/Benchmarking Data, if applicable)

1) Expanding the area defined as the Hess Village Entertainment District to include business properties benefiting directly from their proximity to the area, so they share in the cost of Hess Village Special Duty Police Officers.

The current by-law requires those businesses with liquor licences located within the defined boundaries of the Hess Village Entertainment District to share in the on-going costs for assigning Special Duty Police Officers to patrol the area during peak times. Staff have reviewed the suggestion to expand the boundaries to include other businesses in close proximity, but are recommending no action at this time as the changes recommended in this report, as well as in report PED09127 last Spring, and the comprehensive liquor licence commenting/review process currently being developed by staff are intended to result in better controls on current establishments within the defined Hess Village Entertainment District.

2) Amending the Licensing By-law 07-170 to recognize different classes of entertainment establishments for business licensing purposes.

In order to adequately address the higher risks (e.g. noise, nuisance, capacity, etc) associated with establishments whose primary business is serving alcohol and/or providing entertainment, staff recommends creating a “bars” and “nightclubs” category in the Licensing By-Law as follows:

“bar/nightclub” means a food premises with the primary purpose of any one or more the following:

(i) serving alcohol to customers;
(ii) entertaining customers by playing live or recorded music; or
(iii) accommodating dancing by customers.

Presently, the Licence By-Law classifies establishments that serve liquor as being either a “restaurant” or a “public hall”, and staff are concerned that these categories do not
SUBJECT: Establishing a “Bars and Nightclubs” Licensing Category
(PED09127(b)) (City Wide) - Page 5 of 7

contain controls to adequately protect the public from the higher risks associated with a bar/nightclub. A review of other municipalities has revealed that several, including Burlington, Toronto, Windsor, and Mississauga, define “bars” and “nightclubs” in both their Zoning and/or Licence By-laws.

Establishments whose primary business is serving alcohol and/or providing entertainment (“Bars and Nightclubs”) generally require more attention from enforcement staff because, unlike a restaurant that primarily serves food to seated patrons, these establishments provide additional activities that promote clustering and increased interaction between patrons while consuming alcohol. Amending the Licence By-Law to create a specific category for “bars and nightclubs” will allow additional controls to be required of the owner/operator under the Business Licence such as:

i) confirmation of compliance with the Private Security and Investigative Services Act, 2005 with respect to Bouncers/Security Guards

ii) noise plan: a requirement for the owner/operator to provide information and noise mitigation measures approved by the Issuer of Licences

iii) crowd management plan: a requirement for the owner/operator to provide a crowd management plan including expectations and management of patrons waiting to get into the facility.

iv) person responsible: a requirement for the owner/operator to post the name and contact number of the person(s) responsible for the operation/establishment

Further it is recommended that, for all food premises, the owner/operator be required to provide a detailed floor plan including outdoor areas to the Issuer of Licences and updated information for approval prior to making changes.

While a new category for licensing purposes is supported by the differences between bars/nightclubs and other eating establishments, in particular the higher risks, there is no basis for distinguishing bars/nightclubs from other eating establishments as a use under the Zoning By-law.

In accordance with the provisions of the Municipal Act, 2001, licence fee amounts are to be set to recover costs and cannot be set to raise revenue or to discourage certain businesses. Because of the higher risks associated with these establishments (and the need for increased enforcement with respect to such issues as noise, nuisance complaints, etc) staff recommend that the fee for a business licence under the “Bars and Nightclubs” category be higher than the current $146.00 for eating establishments with the primary purpose of serving food. After a detailed review, staff recommends a $320.00 licence fee for a business licence under the “Bars and Nightclubs” category.
This fee will be reassessed when a comprehensive business licence fee review is undertaken for all licensing categories later this year.

The establishment of a new "Bars and Nightclubs" licensing category is the first step to establishing better controls over licensed establishments in Hamilton. As noted in the Hess Village Review Report (PED09127) the City's process for providing comments on liquor licence applications to the Alcohol and Gaming Commission of Ontario has been deficient. Interim process improvements have been made and staff will be reporting back to the Economic Development and Planning Committee with recommendations for a City-wide comprehensive commenting/review process for liquor licence applications.

3) Amending the Licensing Code By-law 07-170 to require that Schedule 17 and Schedule 21 business licence applicants who employ security guards including bouncers provide the Issuer of Licences, prior to the issuance or renewal of their licences, with confirmation that they are in good standing under the Private Security and Investigative Services Act, 2005.

Staff reported in report PED09127, that bouncers are required to be licensed under the Private Security and Investigative Services Act, 2005 (PSISA), and therefore recommended that the City not duplicate the Province’s regulatory framework by licensing bouncers under its Licensing By-law.

Staff has established a practice of requesting confirmation that business currently licensed under Schedule 17 (Public Halls and Places of Amusement) and Schedule 21 (Restaurant and Food Shops) who employ bouncers comply with the PSISA, in particular, by using only bouncers licensed under that Act. This report recommends that such confirmation be a requirement of the Licence By-law for any application/renewal for a licence under the new "Bars and Nightclubs" category, such that failure to comply with PSISA or to provide the Issuer of Licences with confirmation of such compliance would be grounds for a hearing before the Licensing Tribunal which may result in the refusal, revocation or suspension of a licence.

Any business licensed as a public hall under Schedule 17 (Public Halls and Places of Amusement) will also require a licence as a "Bar/Nightclub" if their primary purpose is serving alcohol/providing entertainment. Therefore, compliance with the PSISA with respect to bouncers need not be a requirement of Schedule 17 of the By-law.
ALTERNATIVES FOR CONSIDERATION:
(include Financial, Staffing, Legal and Policy Implications and pros and cons for each alternative)

City Council could direct further investigation into revising the cost-sharing agreement by expanding the area defined as the Hess Village Entertainment District to include businesses benefiting directly from their proximity to the area to share in the cost of Hess Village Special Duty Police Officers.

CORPORATE STRATEGIC PLAN (Linkage to Desired End Results)


Skilled, Innovative & Respectful Organization
- An enabling work environment - respectful culture, well-being and safety, effective communication

Financial Sustainability
- Delivery of municipal services and management capital assets/liabilities in a sustainable, innovative and cost effective manner

Intergovernmental Relationships
- Maintain effective relationships with other public agencies

Growing Our Economy
- Competitive business environment
- An improved customer service
- A visitor and convention destination

Healthy Community
- Plan and manage the built environment

APPENDICES / SCHEDULES

Appendix “A” to Report PED09127(b) – Amending By-law - Schedule 21

MH/VO/dt
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 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 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 day of , 200.

__________________________________________  ________________
MAYOR                                    CLERK
Fred Eisenberger                         Rose Caterini
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 of 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 for less than 80% 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;

“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,

(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
(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, 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.
### Bars and Nightclubs Consultation History

<table>
<thead>
<tr>
<th>Consultation</th>
<th>Process</th>
<th>Feedback</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Ad placed in Hamilton Spectator and Five Community Papers</td>
<td>Requesting written submission and completion of an online survey</td>
<td>Online survey was completed by 6 respondents.</td>
<td>A total of 6 surveys were completed. 50% of respondents were restaurant owners. 80% of respondents associated the following items as characteristics of a restaurant: 1. Seated dining. 2. Primarily food service. 3. Entertainment secondary to dining. 4. Hours of operation. 80% of respondents associated the following items as characteristics of a bar/nightclub: 1. Primary service is of alcohol. 2. Hours of Operation. 3. Entry to bars/nightclubs only offered to patrons 19 years of age and older.</td>
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<td>Comments:</td>
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<td>Three written responses.</td>
<td>- There is already a provincial body in place (AGCO) to govern such establishments. - Questions as to why there should be different set of rules for restaurants, bars and nightclubs. - Owner’s information should not be posted on the establishments due to safety and security concerns. - Bars should not be allowed to relocate to an area that is lacking public bus service, as that will promote drinking and driving.</td>
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<td></td>
<td>i) Hamilton Musicians’ Guild Local 293 – concern about loss of venues for musicians ii) Ainslie Wood/Westdale Community Association – supporting proposed changes iii) Hamilton Chamber of Commerce – concern about definition, fee increase and inspection process.</td>
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<tr>
<td>2. Mailed out letters to about 80 businesses.</td>
<td>Requesting written submission and completion of an online survey</td>
<td>No feedback was received with this distribution list.</td>
<td>N/A.</td>
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<tr>
<td>3. Mailed out letters to about 80 businesses.</td>
<td>Inviting them to attend the Public Meeting. Public Meeting held on May 10, 2010 at the Scottish Rite Club. 12 business establishments attended</td>
<td>Significant feedback was received. However there appeared to be some uncertainty and confusion about establishing a definite definition of bar/nightclub.</td>
<td>Concerns about reducing the noise levels in Hess Village. Suggestion: there should be special leeway for entertainment district when it comes to noise levels. Definition should include one of the following items: restaurant/outdoor patio, music nightly on patio, serves alcohol, serves food. Establishment should self identify what they are. There are concerns about categorizing this group and additional inspections and how this may harm the reputation of the business. Contact information of the owner of the establishment should not be displayed for safety concerns.</td>
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<tr>
<td>City</td>
<td>Licence Category</td>
<td>Definition</td>
<td>Zoning</td>
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<tr>
<td>Toronto</td>
<td>ENTERTAINMENT ESTABLISHMENT NIGHTCLUB</td>
<td>A premises, including but not limited to a dance hall or disco, used to provide dance facilities for patrons, where seating is not provided for the majority of the patrons and where food or beverage may be offered for sale as an ancillary use.</td>
<td>means premises of a business establishment having dance facilities for patrons, where seating is provided for the majority of patrons and where food beverage may be offered for sale as an ancillary use, such as but not limited to a dance hall or disco.</td>
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<tr>
<td>St. Catharines</td>
<td>Restaurant</td>
<td>means a building or place, or part thereof containing three or more tables from which meals are prepared and sold for the immediate consumption of the public generally while they are seated in the building or place.</td>
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<td>Burlington</td>
<td>“Nightclub”</td>
<td>means a commercial establishment which is either self-contained or is a specific area within a standard restaurant, whose primary function is to provide a dance floor for patrons to dance to pre-recorded music or to live entertainment. Food and liquor may be prepared and/or served to patrons, with food to be served in a designated seating area.</td>
<td>Means an establishment or part thereof, whose principal function is the provision of music, pre-recorded or live music, for dancing by club patrons, having a minimum dance floor area of 10 m2, and where food and/or beverages may be served, but shall not include a restaurant or Adult Entertainment Establishment.</td>
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<tr>
<td>Location</td>
<td>Food Premises</td>
<td>Bar</td>
<td>Windsor Entertainment Lounge</td>
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<td>Ottawa</td>
<td>Food Premises</td>
<td>Bar means a licensed drinking establishment, the principal business of which is to serve any sort of beverage alcohol to the <strong>public</strong> for consumption on the premises, and includes a pub. (bar)</td>
<td>means a building or structure or part thereof where patrons are provided with entertainment, in the form of live and/or pre-recorded music and a dance floor and may include in combination therewith the sale of alcoholic beverages to its patrons for consumption therein or within a physically defined open air sit down area located on the same lot therewith, does not include a public hall, hospitality services establishment, adult entertainment parlour, casino or other establishments that use mechanical or electronic game machines to be used for the purpose of gambling.</td>
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<tr>
<td>Windsor</td>
<td>Entertainment Lounge</td>
<td>means a building or part thereof where patrons are provided with entertainment, in the form of live and/or pre-recorded music and a dance floor and may include in combination therewith the sale of alcoholic beverages to its patrons for consumption therein or within a physically defined open air sit down area located on the same lot therewith, does not include a public hall, hospitality services establishment, adult entertainment parlour, casino or other establishments that use mechanical or electronic game machines to be used for the purpose of gambling.</td>
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<tr>
<td>Guelph</td>
<td>Food Premises</td>
<td>&quot;Restaurant&quot; means any Premises in which food is prepared and provided for sale for immediate consumption within the Building or Premises, and includes an accessory take-out service, ice cream establishment, dairy bar, tea room, sandwich shop, lunch counter, peanut stand, fish and chip shop,</td>
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</table>

"Tavern" means a **Place Used** or designed to be **Used** for the gathering of persons in which **Liquor** offered for sale or sold and includes a bar, Nightclub and the like and includes a **Restaurant** in which **Liquor** is offered for sale or sold beyond 12:01 a.m.
| refreshment booth, refreshment stand and a premises where ice-cream or soft drinks are offered for sale, but excludes a Food Vehicle. |