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:
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General Manager
Planning and Economic Development

PREPARED BY:
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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;
(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:

- Regulation of Hours
- Regulation of Capacity
- Policing Strategies
- By-law defining the review of Hess Village Entertainment District with recommendations
- Review of a possible interim control by-law for Hess Village
- 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
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

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

**Financial:** Establishing a $320.00 fee for establishments licensed under the “Bar and Nightclub” category will result in additional revenues in the order of $25,000.00 annually.

**Staffing:** N/A

**Legal:** N/A

**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
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
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.

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Values: Honest, Accountability, Innovation, Leadership, Respect, Excellence, Teamwork
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.
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
Fred Eisenberger

CLERK
Kevin C. Christenson
APPENDIX A

SCHEDULE 21

FOOD PREMISES

INTERPRETATION

1. In this Schedule,

   “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;

   “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;

   “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; or
   (iii) in part exempt from R.R.O. 1990, Reg. 562 entitled “Food Premises” under section 3 of that Regulation;

   “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 the 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/exports.

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 of 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.