



CITY OF HAMILTON

PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Parking and By-law Services Division

TO: Chair and Members Planning Committee	WARD(S) AFFECTED: CITY WIDE
COMMITTEE DATE: September 4, 2013	
SUBJECT/REPORT NO: Changes to the Liquor License Application Review Process (PED09127(g)) (City Wide)	
SUBMITTED BY: Tim McCabe General Manager Planning and Economic Development Department	PREPARED BY: Al Fletcher (905) 546-2424 Ext. 1358 Todd Lawrie (905) 546-2424 Ext. 2953
SIGNATURE:	

RECOMMENDATION

That the comprehensive Liquor License Application Review Process, approved by City Council on April 25, 2012, be revised in accordance with recent process changes by the Alcohol and Gaming Commission of Ontario (AGCO), all as referenced in Report PED09127(g).

EXECUTIVE SUMMARY

On April 25, 2012, City Council approved the establishment of a comprehensive Liquor License Application Review Process. Since then, the Alcohol and Gaming Commission of Ontario (AGCO) has changed its process for considering liquor license applications which requires the City to adjust its process.

Alternatives for Consideration – Not Applicable

FINANCIAL / STAFFING / LEGAL IMPLICATIONS

Financial/ Legal: N/A

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Staffing: Although process changes by the AGCO have made liquor license hearings before the License Appeal Tribunal more likely, since July 2012 no hearings have occurred as all objections have been resolved. However, in the event that hearings do occur, there could be staffing implications as follows:

- Parking and By-law Services Division – for the collection and review of evidence to support hearings; and,
- Legal Services Division - to prepare and attend License Appeal Tribunal hearings.

HISTORICAL BACKGROUND

On April 25 2012 Council approved the establishment of a Liquor License Application Review Process including a Liquor License Assessment Tool, temporary staffing and fees. The temporary Liquor License Facilitator position was filled in July 2012.

Since November 2012, staff has been communicating with the AGCO to gain an understanding of changes made to their process for considering liquor license applications.

POLICY IMPLICATIONS/LEGISLATED REQUIREMENTS

N/A

RELEVANT CONSULTATION

Legal Services and the AGCO were consulted in the preparation of this Report.

ANALYSIS / RATIONALE FOR RECOMMENDATION

Under the Liquor License Act, a liquor licence is deemed to be a right, not a privilege. However, objections and comments are considered by the AGCO before a liquor licence is approved and issued.

The AGCO provides the City with pre-notification of new applications and applications to change an existing liquor licence (through the liquorlicense@hamilton.ca email address) informing the City of the name and address of the establishment and the type of licence being applied for (i.e. a new sale licence or a change to an existing licence).

Prior to the issuance of a liquor licence by the AGCO, an applicant must obtain a Municipal Information Form signed by the City Clerk as well as Zoning, Public Health Services and Fire Prevention compliance letters. The application is circulated to

departments and agencies for comment. Where there is compliance and no objection from commenting departments and agencies, the City Clerk signs the Municipal Information Form and a “*No Objection*” letter is sent to the AGCO along with any comments received from Fire Prevention, Building Services or Public Health Services.

On February 14, 2013 staff met with the AGCO to discuss the City’s process for considering liquor license applications (a copy of which is attached as Appendix “A” to this Report) in regards to changes to the AGCO’s process. Until that time, the AGCO was prepared to add conditions to a liquor licence without an objection being received from the public and/or the City. However, at this meeting, the AGCO clarified the difference between “*objections*” and “*comments*” with respect to an application. “*Objections*” may be made directly by members of the public who could be affected by the liquor licence and/or by Council if the application is deemed “not in the public interest having regard to the needs and wishes of the residents”. “*Comments*” are made by municipal departments and agencies when there are concerns about compliance with applicable statutes, regulations and by-laws, such as the Fire and Building Codes, Zoning By-law or Health Regulations. Objections and comments are to be forwarded separately to the AGCO.

(1) **Objections:**

Objections from the Public: When an objection is received from a member of the public, the AGCO automatically holds a hearing. When there are five or fewer public objections, a telephone conference call hearing is held by the AGCO. Where there are more than five, a formal hearing is scheduled before the License Appeal Tribunal (the Provincial body that hears appeals with respect to a number of Provincial licences, including liquor licences).

Objections from Council: When Council determines that a liquor license application “*is not in the public interest having regard to the needs and wishes of the residents*”, a Council resolution must be passed. A sample resolution is attached as Appendix “B” to this Report. When the AGCO receives such a resolution, it automatically schedules a Licensing Appeal Tribunal pre-hearing.

It is important to note that the AGCO has advised, that if there is a consistent pattern of objections to all liquor licences by a municipality, the AGCO may, in its sole discretion, not accept further objections from that municipality.

Objections must be received by the AGCO no later than the expiry date as stated on liquor license application placard/newspaper advertisement. The expiry date may provide 7, 15 or 30 days for objections to be made, depending on the type of licence. Objections received after the expiry date may not be accepted, at the sole discretion of the AGCO.

The City requires legal representation at all Licensing Appeal Tribunal pre-hearings and hearings. If the City submits a Council resolution to the AGCO and fails to have representation at the pre-hearing or hearing, the liquor licence may be issued without conditions.

After an objection is submitted to the AGCO by either the public and/or Council, there is an opportunity to negotiate conditions which address the objection. Where the objector and the applicant agree to conditions, a “*No Objection*” letter and a copy of the agreement can be sent to the AGCO which adds the conditions to the Liquor Licence without the scheduled pre-hearing or hearing taking place.

It should be noted that while City staff can assist with an agreement as to conditions between a Councillor and an applicant, the City cannot assist with agreements between the public and an applicant.

(2) Comments:

Comments are made by municipal departments and agencies about a liquor license application’s compliance with applicable statutes, regulations and by-laws, such as the Fire Code, Building Code, Zoning By-law or Health Regulations. Where a liquor license application has been approved, as described above, the liquor licence will not be issued until there is compliance with all statutes, regulations and by-laws. Only objections, not comments, can result in conditions being placed on a liquor licence. Non-compliance (negative comments) that relate to statutes, regulations and by-laws are left up to the applicant to comply with.

ALTERNATIVES FOR CONSIDERATION

N/A

ALIGNMENT TO THE 2012 – 2015 STRATEGIC PLAN:

Strategic Priority #1

A Prosperous & Healthy Community

WE enhance our image, economy and well-being by demonstrating that Hamilton is a great place to live, work, play and learn.

Strategic Objective

- 1.5 Support the development and implementation of neighbourhood and City wide strategies that will improve the health and well-being of residents.

APPENDICES / SCHEDULES

Appendix "A" to Report PED09127(g) – Liquor License Application Review Process
Appendix "B" to Report PED09127(g) – Council Resolution (Sample)

AF/TL/dt

Liquor License Application Review Process

New or Changes to an Existing Liquor Licence

1. Take in the complete application. Application consists of:
 - a. Alcohol and Gaming Commission of Ontario (AGCO) Municipal Information Form
 - b. In-House Application Form
 - c. Zoning Compliance Application
 - d. Architectural Drawings, Premise Plan and Site Plan (stamped by an architect)

2. Take fees of:

a. Fire Prevention Inspection	\$157.52 + HST	\$72.61 + HST
b. Public Health Service Inspection	\$ 30.00	\$ 30.00
c. Zoning Compliance Letter	\$163.00	\$163.00
d. Municipal Administration Fee	\$179.00	\$179.00
Total 2013 Fee	\$550.00	\$454.05

3. Provide a commenting expiry date in relation to the AGCO expiry date for Ward Councillor, SEAT, Urban Renewal, and Hamilton Police Service that allows enough time to process a motion should there be an objection. Provide 15 business days for Fire Prevention, Public Health Services, Public Works and Building Services to process their compliance/non-compliance letters.
4. Provide the Ward Councillor with only the in-house application adding the expiry date for commenting to the face of the email.
5. Circulate all documents with proof of payment to:
 - a. Building Services
 - b. Public Health Services
 - c. Fire Prevention
 - d. Hamilton Police Service
 - e. Public Works
 - f. Urban Renewal
 - g. SEAT

No Objections/Compliance Letter:

6. Municipal Information Form signed by the Deputy Clerk and forwarded to AGCO and applicant.

Objection from Ward Councillor:

7. Deputy Clerk will prepare the Motion to Council to formally object the application and request a License Appeal Tribunal (LAT) Hearing. The resolution will be sent to the applicant and AGCO.

Objection from Other than Councillor:

8. Provide application details and objection to Ward Councillor to evaluate if they support the objection or not.
9. If the Ward Councillor supports the objection, Motion to Council to formally object the application, request a LAT Hearing and instructing Legal Services to represent the City at the Hearing. If no support then the objection is noted and filed.

Non-Compliance Letters:

10. If a non-compliance letter is received it will be forwarded to the applicant with instructions to contact the department to rectify the violations. (Non-compliance does not require any response from Council. It is based on violations to a code, regulation or by-law).

Terms and Conditions Agreement:

11. The Ward Councillor or objecting department will be given the opportunity to request conditions to be added to a liquor licence. Should there be no conditions then a LAT Hearing is scheduled. If there are conditions requested the applicant and the Liquor License Facilitator will negotiate to come to an agreement on the conditions.
12. If an agreement is reached the applicant will sign the agreement and the Liquor License Facilitator will issue a letter withdrawing the City of Hamilton's objection as long as the AGCO adds the attached conditions to the liquor licence. If no agreement is reached a LAT Hearing will be scheduled.
13. The applicant and the AGCO are issued the signed documents.

License Appeal Tribunal (LAT) Hearing:

14. The AGCO is responsible for forwarding all Hearing requests to LAT.

15. LAT will notify the Deputy Clerk of the date, time and location of the LAT Hearing.
16. Any conditions that the objector wants affixed to the liquor licence can be prepared in an agreement for the Pre-Hearing. This will allow the applicant and the City of come to an agreement prior to the formal Hearing.
17. All conditions agreed upon at the LAT Hearing maybe be affix to the establishments liquor licence and enforceable if violated.

Temporary Extension Permits:

1. Take the completed in-house application form and event map.

Map must include:
 - Dimensions of licensed area;
 - Location of entry and exit points;
 - Location of all Fire connections within the licensed area and adjacent to that area; and,
 - Area and make up of any structure being used.
2. Take the fee of \$179.00 for processing.
3. Circulate the package with a 15 business day expiry for commenting to the following:
 - a. Hamilton Police Service
 - b. Building Services
 - c. Public Health Services
 - d. Public Works
 - e. SEAT
 - f. Urban Renewal
 - g. Provide the Ward Councillor only the in-house application and map

Objection from Ward Councillor:

4. Ward Councillor can give suggestions to amend the event details to alleviate his/her objection. The applicant would then amend the event to reflect the changes and the Ward Councillor would supply a non-objection email, or comment.
5. If the Ward Councillor is not in support of the event as a whole then the applicant and the AGCO is issued an objection letter.

Objection/Non-compliance from Other than Ward Councillor:

6. Suggestions to amend the event details to alleviate the objection will be requested of the objecting department. The applicant would then amend the event details to reflect the changes and the objecting department would supply a non-objection letter, email, or comment.
7. If the department is not in support of the event as a whole the objection is forwarded to the Ward Councillor. If the Councillor supports the objection an objection letter is sent to the applicant and the AGCO. If the Councillor does not support the objection, it is noted but not enforced. Should there be a non-compliance related to codes, by-laws or regulations, an objection letter would be sent to the AGCO and applicant advising of the non-compliance and failure to meet the by-law, code or regulation.

Non Objections/Compliance Letters Received:

8. Should all comments come back with non-objections and compliance, the Deputy Clerk will sign a non-objection letter. A copy is forwarded to the AGCO and applicant with Building Services, Fire, and Health letters.

* There are no resolutions required related to these applications.*



City of Hamilton
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Hamilton, Ontario,
Canada L8P 4Y5

Mary Gallagher, Deputy Clerk
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Fax # (905) 546-2095
mary.gallagher@hamilton.ca

February 28, 2013

Fax: 416-326-5566

Alcohol & Gaming Commission of Ontario
90 Sheppard Avenue East
Suites 200-300
Toronto, Ontario
M2N 0A4

Dear Madam/Sir:

**Subject: Objection to Liquor License Application F.L.A. Café and Bar, 658-660
 Barton Street East, Hamilton, Ontario, L8L 6L6**

At its meeting of February 27, 2013, Hamilton City Council passed the following resolution:

Whereas, the F.L.A. Café and Bar at 658-660 Barton Street East, Hamilton, Ontario has applied for a Liquor Licence;

And Whereas, under Section 7.1 (1) of the Alcohol and Gaming Commission of Ontario's legislation, they shall consider a resolution of Council of the municipality, in which are located the premises for which a person makes an application to sell liquor or holds a licence to sell liquor, as proof of the needs and wishes of the residents of the municipality for the purposes of clause 6 (2) (h) of the Act;

Be it resolved:

That the Alcohol and Gaming Commission of Ontario (AGCO) be advised that the City of Hamilton wishes to object to the Liquor License Application for F.L.A. Café and Bar at 658-660 Barton Street East, Hamilton, Ontario as the issuing of the licence would not be in the best interest of the public.

Thank you for your consideration respecting this matter.

Sincerely,

Mary Gallagher, Deputy Clerk

Copied: Councillor Bernie Morelli, Ward Councillor
 Todd Lawrie, Liquor Licensing Facilitator