THE LICENSING COMMITTEE PRESENTS REPORT 08-004 AND RESPECTFULLY RECOMMENDS:

1. Show Cause Hearing for Batinos Souvenirs, located at 229 King Street East, Hamilton, Ontario respecting their Second Hand Shop Licence (Item 4.1)

   That the Second Hand Shop Licence, for Batinos Souvenirs, located at 229 King Street East, Hamilton, Ontario be revoked.

2. Digital Recording and Transcription of Licensing Committee Hearings and Appeals (CL08007) (City Wide) (Item 5.1)

   (a) That the City of Hamilton Licensing Committee’s hearings not be digitally recorded or transcribed by the City of Hamilton.

   (b) That should an Appellant or their representative wish to have their hearing recorded and/or transcribed or should the Issuer of Licences wish to have a hearing recorded and/or transcribed they may do so under the following conditions:
(i) Written notification, respecting the intent to record and/or transcribe the proceedings, from the Appellant or their representative or the Issuer of Licences must be provided to the Committee Clerk, in writing, a minimum of fourteen (14) days in advance of the set hearing date; and,

(ii) That, in the case of the Appellant or their representative, the verbatim recording and transcription service be retained and paid in full directly by the Appellant or their representative; and,

(iii) That the Appellant or their representative or the Issuer of Licences use a professional recording and transcription service satisfactory to the City Clerk’s Office.

(iv) That only the hearing, specific to the appellant (not including any deliberations of the Licensing Committee), be recorded and/or transcribed.

3. Review of City of Hamilton Licensing Code By-law 07-170 – Section(s) pertaining to Second Hand Goods and other Like Business Licences

That the Economic Development & Planning Committee review and amend, where necessary, the City of Hamilton Licensing Code By-law 07-170 section(s) pertaining to Second Hand Goods and other like business licences.

FOR THE INFORMATION OF COMMITTEE:

(a) CHANGES TO THE AGENDA (Item 1)

There were no changes to the agenda.

(b) DECLARATIONS OF INTEREST (Item 2)

There were none declared.

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

The minutes of the April 11, 2008, meeting of the City of Hamilton Licensing Committee were approved, as presented.
(d) **Show Cause Hearing for Batinos Souvenirs, located at 229 King Street East, Hamilton, Ontario respecting their Second Hand Shop Licence (Item 4.1)**

Mr. Ghaleb Bataineh, owner of Batinos Souvenirs, requested that the Licensing Committee provide him with an adjournment for approximately 4 weeks so that he may obtain legal counsel; noting that the lawyers he had spoken with had been busy and had conflicts in their schedules.

When asked by the Committee if he had spent the full four weeks, since April 9, 2008 when he was hand delivered his notification of the show cause hearing, attempting to obtain legal counsel, Mr. Bataineh stated that no he had only been looking for a lawyer for the last few days.

Committee then asked Vince Ormond, Coordinator, Municipal Law Enforcement, staff’s position regarding the appellant’s request for adjournment. Mr. Ormond noted that he had two witnesses present and the appropriate exhibits to move forward.

The City of Hamilton Licensing Committee moved into Closed Session, at 10:45 a.m., to deliberate respecting Mr. Ghaleb Bataineh’s, owner of Batinos Souvenirs, request for an adjournment of the show cause hearing respecting Batinos Souvenirs, located at 229 King Street East, Hamilton, Ontario.

Committee had reconvened in Open Session at 10:55 a.m.

Upon reconvening in Open Session, the Committee advised Mr. Bataineh that as no notification was provided to either staff or the Committee Clerk, prior to the hearing and that it was Committee’s belief that the appellant had sufficient time to arrange for legal counsel; Committee would proceed with the hearing.

Mr. Ghaleb Bataineh was solemnly affirmed, prior to providing his testimony.

Mr. Ormond advised Committee that, although Mr. Bataineh had no difficulty speaking or understanding the English language, the appellant had brought with him Mr. Said Afrajy, Multi-lingual Community Interpreter Services (Toronto), to assist him, should there be any legal terminology or other language that Mr. Bataineh did not understand.

At that time, Chair Whitehead advised the appellant that if at any time throughout the proceedings he didn’t understand or had questions with respect to what was happening, he was to raise his hand and the Committee would stop to provide clarity for him. Mr. Bataineh confirmed that he understood the Chair’s comments.

Mr. Bataieh was asked if he had any opening comments. The appellant had no opening comments.

Mr. Ormond then provided his opening statements and the following exhibits:
Exhibit 1: A copy of the Establishment Licence for a Second Hand Shop for Batinos Souvenirs, located at 229 King Street East, Hamilton, Ontario.

Exhibit 2: Correspondence from William Young, Acting Manager Municipal Law Enforcement, to Stephanie Paparella, Legislative Assistant, Office of the City Clerk, requesting that a show cause hearing be scheduled regarding the Establishment Licence for a Second Hand Shop for Batinos Souvenirs, located at 229 King Street East, Hamilton, Ontario.

Exhibit 3: Copy of the register letter (RW 227 675 545 CA) to Mr. Ghaleb Bataineh, dated April 4, 2008, providing notice of the show cause hearing respecting Batinos Souvenirs, located at 229 King Street East, Hamilton, Ontario.

Exhibit 4: Copy of the letter sent to Mr. Ghaleb Bataineh, dated April 22, 2008, which provided disclosure of the Exhibits to be brought before the Licensing Committee at the show cause hearing.

Exhibit 5: Copy of a letter sent to Mr. Ghaleb Bataineh, dated May 1, 2008, providing disclosure of additional Exhibits to be brought before the Licensing Committee at the show cause hearing.

Exhibit 6: Copies of pawn reports received by Detective Constable Russ Johnson, Hamilton Police Services.

Mr. Ormond called upon Detective Johnson as his first witness.

Detective Constable Russ Johnson was sworn under Oath, prior to providing his testimony.

Detective Johnson confirmed that has worked with the Hamilton Police Service for approximately nine (9) years, and was currently with the Break, Enter, Auto and Robbery (B.E.A.R.) Unit, Pawn Detail. The B.E.A.R. Unit, Pawn Detail duties include, but are not limited to, the investigation of sources of stolen property, monitoring second hand and pawn shops for stolen property and to determine if the businesses are in compliance with the applicable by-laws. Detective Johnson confirmed that he is familiar with both Mr. Bataineh and Batinos Souvenirs (229 King Street East, Hamilton).

Detective Johnson explained that the Pawn Reports (Exhibit 6) are issued to the establishment owner, by Hamilton Police Services, and one form is to be completed in full for each item that is sold to the establishment. The original copy is to be kept by the owner and the copy is to be provided to Hamilton Police Services.
Hamilton Police Services provides their comments only in the box (on the pawn report) titled “Pawn Officers Use”. This box also includes the officers initials and badge number.

Mr. Ormond asked Detective Johnson if he is aware of how many of these items have been sold. Detective Johnson informed Committee that he reviews between 50 to 100 pawn reports per day, and does not track sales of the items listed on the pawn reports.

The appellant was asked if he had any objections to Detective Johnson referring to his notes respecting Exhibit 7. The appellant stated that he had no objections to the Detective referring to his notes.

Detective Johnson provided an overview of the Crown Brief Synopsis (shown as Exhibit 7), which outlined the charges, of November 3, 2007, against the appellant respecting Batinos Souvenirs for:

(a) Charge #1: Failure to Keep Accurate Records – City of Hamilton Licensing Code By-law 07-170, Schedule 22, Section 4(1); and,

(b) Charge #2: Fail to Obtain Photograph – City of Hamilton Licensing Code By-law 07-170, Schedule 22, Section 6(e).

It was noted for the record that the appellant plead guilty to both charges (above) before the courts.

Detective Johnson then provided an overview of the Crown Brief Synopsis (shown as Exhibit 8), which outlined the charges, of January 9, 2008, against the appellant respecting Batinos Souvenirs for:

(a) Charge #1: Purchase Goods from Person Under 18 – City of Hamilton Licensing Code By-law 07-170, Schedule 22, Section 5.

It was noted that the appellant had also plead guilty to the charge (above) before the courts.

Detective Johnson informed Committee that, although Mr. Bataineh informed police that his employee said he viewed the minor’s Ontario health card (OHIP) to confirm his age, the minor’s mother stated to police that this would be impossible, as she retains her son’s health card and he would not have access to it.

Mr. Ormond then provided an overview Exhibits 10 and 11. Exhibits 10 and 11 are statements from the Ontario Court of justice, which outline the courts decision respecting the charges noted above. The appellant was found guilty of all charges and fined accordingly.

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Mr. Ormond proceeded to introduce Exhibit 12 – a colour photograph of a building, dated May 5, 2008, which Detective Johnson confirmed to be Batinos Souvenirs, located at 229 King Street East, Hamilton, Ontario.

Mr. Ormond then asked Detective Johnson to describe the items that are available for sale at Batinos Souvenirs, to which he replied:

- Electronics, jewellery, computers, knives, anything you can think of, bicycles, drug paraphernalia – for the consumption of marijuana or crack cocaine.

Detective Johnson stated that Mr. Bataineh had advised him that he obtains his items for sale from wholesalers, liquidators and the public, and that the number of used items received from the public is quite extensive.

Mr. Ormond then introduced Exhibit 13 – Section 14(1) of the City of Hamilton Licensing Code By-law 07-170, which provides reasons why the Issuer of Licences may recommend a hearing before the Licensing Committee to consider whether a licence should be revoked or suspended.

Exhibit 14, which illustrates Section 22, sub-sections 4.(1) and 5, respecting Record Book and Report keeping, and Identification and Purchasing from Minors respectively.

At this point, Mr. Bataineh was asked if he had any questions of either Mr. Ormond or Detective Johnson to which he replied he did not.

Mr. Bataineh then took the witness chair and was asked if he had any evidence he wished to provide. Mr. Bataineh provided Committee with original pawn reports, all of which were dated for April and May 2008.

Committee reviewed the pawn reports, but determined that since all of the pawn reports were dated for occurrences after his notification of the show cause hearing and none were from the time between when he was charged and convicted of the previous offences, and the time he was notified of the hearing, that they were not relevant to this hearing.

The Chair also confirmed and reminded Mr. Bataineh that he was still under Sworn Affirmation. The appellant confirmed that he understood.

The appellant was provided the opportunity to speak on his own behalf and explain to Committee the circumstances of the charges. Mr. Bataineh stated the following:

- Admitted that the incidents did occur.
• That he (the appellant) misunderstood the by-law with respect to not filling out pawn reports or taking photographs when performing the items exchanged on November 3, 2007.
• That the minor (incident of January 9, 2008) told him that he was 18 and because he was a “big guy” he believed him.
• Often when he is working on his own and when the shop gets busy, he tries to get people in and out of the store, as soon as possible, so they don’t steal.
• All incidents were “honest mistakes” not intentional.
• Confirmed that he had been operating as a second hand shop for seven (7) to eight (8) years.
• Not really familiar with Licensing Code By-law (07-170) because the City and police did not provide him with a copy or guidelines.
• Confirmed to Mr. Ormond and Committee that he himself filled out all pawn reports for Batinos Souvenirs.
• Confirmed that items in his store were supplied by wholesales and the public and that approximately 50% of those items were from the public.

Mr. Ormond asked the appellant if he had informed the police that the minor (respecting January 9, 2007 charge) had used his Social Insurance Card for identification. Mr. Bataineh replied that he couldn’t remember.

Mr. Ormond asked if he mislead police with respect to this matter, and the appellant said no.

When the appellant was asked by Committee if the by-law was brought to his attention by police when charged on November 3, 2007, and if he has complied from that point on, he responded yes.

At that time, the Committee then asked the appellant to explain that why, if when he was aware that he was required to comply with the Licensing Code By-law 07-170 in November 2007, did he again choose not to comply in January 2008.

The appellant stated that he did take the photo and that he could not remember if the minor showed identification or not – he took the minor’s word that he was 18 years old.

It was noted by Committee that Exhibit 6 also showed other pawn reports that were missing identification and other important information. The appellant replied that he always looks at the identification, but does not always record it on the pawn report. As well, the appellant stated that his patrons are not always happy with the amount of money they are getting for their item(s) so they don’t provide him with the information.
Final Submissions:

Appellant – Ghaleb Bataineh

Mr. Bataineh stated that these were his first offences (November 3, 2007 and January 9, 2008), and that it would be the last time.

The appellant then requested that the Committee not revoke his licence, as it is his livelihood and he supports a family of six (6). Subsequently, suggesting that the Committee may suspend his licence in the future should he be found in non-compliance with the Licensing Code By-law (07-170).

Vince Ormond, Coordinator, Municipal Law Enforcement, summarized by stating:

- That Batinos Souvenirs has a history of inaccurate record keeping of both individuals and item information (no identification, no serial numbers, etc.);
- The appellant has entered two guilty pleas to several charges for which he was convicted before the Courts; and,
- It is the City’s responsibility, through enforcement of the Licensing Code By-law 07-170, to ensure that both the public’s interests and public safety are protected.

Therefore, staff recommended that the Establishment License for a Second Hand Shop for Batinos Souvenirs, located at 229 King Street East, Hamilton, Ontario, be revoked.

Committee moved into Closed Session, at 11:00 a.m., to deliberate upon the information before them, and reconvened in Open Session at 11:15 a.m.

Having heard and considered the submissions of the parties, the Committee provided its recommendation, with respect to the show cause hearing for Batinos Souvenirs (Mr. Ghaleb Bataineh), located at 229 King Street East, Hamilton, Ontario respecting their Second Hand Shop Licence, as shown in Item 1 above.

(e) ADJOURNMENT (Item 10)

There being no further business, the Committee adjourned at 11:30 a.m.

Respectfully submitted,

Councillor T. Whitehead, Chair
City of Hamilton Licensing Committee

Stephanie Paparella
Legislative Assistant
May 8, 2008

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