TO: Chair and Members  
Economic Development and Planning Committee  
WARD(S) AFFECTED: CITY WIDE

COMMITTEE DATE: April 6, 2010

SUBJECT/REPORT NO:  
Amendments to the City of Hamilton Licensing By-law 07-170 (PED10063) (City Wide)

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

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

SIGNATURE:

RECOMMENDATION:

(a) That in addition to a number of housekeeping amendments the following changes to the City of Hamilton Licensing By-law 07-170 be approved:

i) clarify the definition of owner/operator for all licensed businesses  
ii) clarify when a business licence expires, and establish a maximum of 60 day period to renew an expired business licence;  
iii) update/clarify the process for accepting, circulating and approving licence applications;  
iv) delete Schedule 31 “Fees” from the by-law;

(b) That the amending by-law attached as Appendix “A” to report PED10063 which is in a form satisfactory to the City Solicitor, and which amends the General Provisions and Schedule 25 and 31 of the Licensing By-law No. 07-170 be enacted.

(c) That the $120 fire inspection fee for licences be continued and be 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.

Vision: To be the best place in Canada to raise a child, promote innovation, engage citizens and provide diverse economic opportunities.  
Values: Honesty, Accountability, Innovation, Leadership, Respect, Excellence, Teamwork
(d) That the charge for any cost incurred when the City exercises its authority to inspect under s. 436(2) of the Municipal Act, 2001 be approved 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.

**EXECUTIVE SUMMARY**

Report PED10063 addresses proposed amendments to the City of Hamilton Licensing By-law 07-170 including up-dating and clarifying the intent of the by-law.

*Alternatives for Consideration – See Page 4*

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

N/A

**HISTORICAL BACKGROUND** (Chronology of events)

The Licensing By-law was enacted in 2007 but requires on-going amendments to clarify its meaning, to improve its implementation and to maintain the original intent as approved by Council.

This report is prompted because of concerns raised during “Show Cause” hearings at the Licensing Tribunal relating to the term owner/operator and when a business licence expires, as well as technical/housekeeping amendments required to maintain Council’s intent and to provide clarity of the by-law.

**POLICY IMPLICATIONS**

N/A

**RELEVANT CONSULTATION**

Legal Services was consulted in the preparation of this report.

**ANALYSIS / RATIONALE FOR RECOMMENDATION**

(include Performance Measurement/Benchmarking Data, if applicable)

Over time, the Licensing By-law requires technical and housekeeping changes to remove outdated information and to remove obsolete or imprecise language. The proposed amending by-law makes a number of these changes, helping staff, members
of the public, the Licensing Tribunal and the Courts, more accurately interpret the by-law. These changes are minor in nature, and are intended to preserve the by-law intent as originally approved and enacted by Council.

In addition, the following is a list of several substantive changes being recommended:

- clarify that the applicant is the Owner/Operator of the business to more clearly identify the person responsible for the business.

  For more effective enforcement efforts, particularly at “show-cause” hearings, it is necessary to better identify a person responsible for a business. This includes identifying who has:

  - the right to possess or occupy the premises
  - significant financial responsibility
  - responsibility for managing employees
  - responsibility for the business under permissions granted by Federal or Provincial governments or a vendor’s permit.

- adding a 60 day time limit on the renewal of an expired licence to the General Provisions of the by-law.

  Presently the by-law has no defined renewal period for an expired business licence which means that technically, an expired licence could be renewed up to one day less a year from the date of expiry. Setting a fixed time period for renewal of an expired licence will provide clarity and aid staff and the public in processing applications. Businesses that re-apply after the 60 days have lapsed would be required to apply for a new licence rather than a renewal.

- deleting Schedule 31 “Fees”

  All licence fees, except the fire inspection fee, are now included in the City’s User Fees and Charges By-law and therefore, Schedule 31 of the Licensing By-law is no longer required. Continuation of the fire inspection fee and its addition to the User Fees and Charges By-law is being recommended.

- additional inspection costs.

  Costs may be incurred for inspections to ensure compliance with the by-law and that the information staff proceed on is accurate and defensible. This may include inspections or tests that are beyond the scope of the Municipal Law Enforcement Officers level of expertise and could require an outside expert to inspect or review the information. The cost for the qualified inspection may differ from the rates
established through the normal inspection process and therefore should be applied to the licensee or applicant rather than have the City incur the cost.

**ALTERNATIVES FOR CONSIDERATION:**

(include Financial, Staffing, Legal and Policy Implications and pros and cons for each alternative)

With respect to recommendation (a) ii) Council could establish a shorter or longer time period for a licence renewal after expiry of the licence.

**CORPORATE STRATEGIC PLAN** (Linkage to Desired End Results)


*Healthy Community*

- Ensure effective licensing program to provide for public health and safety and consumer protection.

**APPENDICES / SCHEDULES**

Appendix “A” to Report PED10063 – Amending By-law

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 various housekeeping and technical amendments to the General Provisions and Schedules XXX of City of Hamilton By-law No. 07-170;

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

1. Subsection 4(1) of the General Provisions of By-law No. 07-170 is amended by adding the following new paragraph (a) and relettering the subsequent paragraphs accordingly:

   (a) that the applicant, except an applicant for a licence as an attendant under Schedules 1 or 4 or as a driver under Schedule 25, is the owner or operator of the business and “owner” or “operator”, unless otherwise defined in the applicable Schedule, means a person who has responsibility for carrying out the business including but not limited to:

   (i) having the right to possess or occupy the premises where the business is carried on;

   (ii) having significant financial responsibility for the business such as responsibility for accounts payable and accounts receivable;

   (iii) managing any employees of the business such as hiring or firing such employees;
(iv) having responsibility for the business under a permission granted by the federal or provincial governments such as a liquor licence (Liquor Licence Act) or a vendor’s permit (Retail Sales Tax Act).

2. Subsection 4(2) of the General Provisions of By-law No. 07-170 is amended by deleting “1(a) or (b)” and replacing it with “1(a), (b) or (c)” and by deleting “1(c)” and replacing it with “1(d)”.

3. Subsection 6(6) of the General Provisions of By-law No. 07-170 is deleted and replaced by the following new subsection 6(6):

6(6)(a) Every person who is a licence holder under this By-law shall ensure that they renew the licence before it expires.

(b) In the event a licence holder fails to renew their licence before it expires, they may renew their licence no more than 60 days after it expires provided that they pay, in addition to the applicable licence fee, the applicable late payment fee.

(c) No licence shall be renewed more than 60 days after it expires.

4. Subsection 8(1) of the General Provisions of By-law No. 07-170 is amended by deleting the words “respectively numbered section of Schedule 31” and replacing them with “User Fees and Charges By-law”.

5. Subsection 8(5) of the General Provisions of By-law No. 07-170 is amended by adding the following new subsection (b) and relettering the subsequent paragraphs accordingly:

(b) where the licensee ceases to be the owner or operator as defined in paragraph 4(1)(a);

6. Paragraph 8(6)(e) and Section 9 of the General Provisions of By-law No. 07-170 are amended by deleting the words “Schedule 31 of this By-law” and replacing them with “the User Fees and Charges By-law”.

7. Paragraph 8(7)(a) of the General Provisions of By-law No. 07-170 is amended by deleting “(4)” and replacing it with “(5)”.

8. Paragraph 8(7)(b) of the General Provisions of By-law No. 07-170 is deleted and replaced
by the following new paragraph:

(b) where a licence that has expired without renewal under subsection (2) or expired under paragraphs (5)(b), (c), (d) or (e), within seven days of the date of the expiry; or

9. Section 11 of the General Provisions of By-law No. 07-170 is deleted and replaced with the following new section:

11(1) The Issuer of Licences upon receipt of a proper, completed application and payment of fees for a licence under this By-law shall circulate the application to such City or provincial departments or agencies as the Issuer of Licences deems necessary or as directed by Council, including but not limited to the Fire Department, Hamilton Police Services, the Planning and Economic Development Department, Public Health Services and the Public Works Department.

(2) Departments or agencies to which the application is provided under subsection (1) shall review obtainable information and provide the Issuer of Licences with comments or compliance reports on whether the information indicates non-compliance with an applicable law which the department or agency enforces and which applies to the proposed business, and where an inspection is made, shall provide the Issuer of Licences with a report on any non-compliance found as a result of that inspection.

(3) Where, under this By-law an applicant or licensee is to be tested, the City department responsible for the testing shall conduct the test or provide an opportunity for taking the test, and provide the Issuer of Licences with the test results.

(4) Applicants and licensees, as a condition of obtaining or continuing to hold a licence, shall permit inspections or inquiries by representatives of the departments or agencies circulated under subsection (1) as may be reasonably requested, and shall undertake the tests referred to in subsection (3).

(5) Fees which are required to be paid for the making of an inspection or the conducting of a test under subsections (3) and (4) as prescribed in the User Fees
and Charges By-law may be collected by the Issuer of Licences before a licence is issued or renewed.

(6) The Issuer of Licences may send notice of the comments or other response from the departments or agencies received under this section to the applicant or licensee.

10. Subsection 12(1)(b) of the General Provisions of By-law No. 07-170 is deleted and replaced with the following new subsection 12(1)(b):

(b) refuse to issue the licence where the requirements for the applicant and applicable licence under this By-law, including those imposed by any Schedule or conditions to be met, are not met, or where it is determined that the application is incomplete or contains false or misleading information, any fees to be paid in respect of the licensed premises under the User Fees and Charges By-law have not been paid, fines for convictions under the Provincial Offences Act are due and unpaid, or that a prohibition or other court order made upon such conviction have not been complied with by the applicant or licensee;

11. Subsection 14(1)(c) of the General Provisions of By-law No. 07-170 is deleted and replaced with the following new subsection 14(1)(c):

(c) unless such person pays all required fees pursuant to the User Fees and Charges By-law to the Issuer of Licences;

12. The General Provisions of By-law No. 07-170 are amended by adding the following new section 25a after section 25:

25a Every licence holder shall advise the Issuer of Licences immediately in writing of any change to the information required to be filed in respect of their licence under the General Provisions or the Schedule under which their licence is issued.

13. Section 26a of the General Provisions of By-law No. 07-170 is amended by adding the following new subsection (2.1) after subsection (2):
(2.1) Any cost incurred by the City in exercising its authority to inspect under subsection (2), including but not limited to the cost of any examination, tests, sampling or photographs necessary for the purposes of the inspection, shall be paid by the person who is licensed or required to be licensed under this By-law to carry on the business being inspected.

14. Section 30 of the General Provisions of By-law No. 07-170 is amended by deleting “Schedule 31 Fees”.

15. Appendices “A” and “B” of the General Provisions of By-law No. 07-170 are deleted and the subsequent Appendices are relettered accordingly.

16. Subsection 7(1) of Schedule 1 of By-law No. 07-170 is deleted and replaced with the following new subsection:

(1)(a) No adult services entertainment establishment shall be located and no adult services entertainment establishment licence shall be issued except for adult services entertainment establishments in areas as permitted by subsections (2) and (3); and

(b) no more than two adult services entertainment establishment licences shall be issued.

17. Subsection 7(2) of Schedule 1 of By-law No. 07-170 is amended by deleting the words “Subject to subsection (3),”.

18. Subsection 7(3) of Schedule 1 of By-law No. 07-170 is deleted and replaced with the following new subsection 7(3):

(3) Despite subsection (2), the premises at the following municipal addresses licensed and in actual use as a adult services entertainment establishment on April 14, 2010, are each deemed to be a location where one adult services entertainment establishment is permitted to operate and eligible to be licensed only for so long as the premises continues to be used for such purposes, the business owner maintains their licence and the business carried on therein is in compliance with this By-law and all other applicable law:
(a) 92 Barton Street East, Hamilton;

(b) 1038 Barton Street East, Hamilton.

19. Subsections 7(4), 7(5) and 7(6) of Schedule 1 of By-law No. 07-170 are deleted and replaced with the following new subsection 7(4):

(4) When an adult services entertainment establishment business owner licence expires and is not or cannot be renewed or an adult services entertainment establishment business owner licence is otherwise surrendered or revoked, then upon receipt of a complete application which otherwise complies with this By-law, the Issuer of Licences shall carry out a selection process for a licence as follows:

(a) the available business owner licence shall be advertised in the Hamilton Spectator newspaper and on the City’s website inviting the submission of applications within a specified period of time;

(b) a draw shall be conducted from all of the submitted, complete applications which otherwise comply with this By-law; and

(c) the winner of the draw may be issued a business owner licence for an existing or new location provided that such existing or new location conforms to the criteria set out under subsection (2) and is approved by Council.

20. Subsection 10(1) of Schedule 1 of By-law No. 07-170 is deleted and replaced with the following new subsection 10(1):

(1)(a) No Class A adult video store shall be located and no Class A adult video store licence shall be issued except for Class A adult video stores in areas as permitted by subsections (2) and (3); and

(b) no more than two Class A adult video store licences shall be issued.

21. Subsection 10(2) of Schedule 1 of By-law No. 07-170 is amended by deleting the words “Subject to subsection (3),”. 
22. Subsection 10(3) of Schedule 1 of By-law No. 07-170 is deleted and replaced by the following new subsection 10(3):

(3) Despite subsection (2), the premises at the following municipal addresses licensed and in actual use as a Class A adult video store on April 14, 2010, are each deemed to be a location where one Class A adult video store is permitted to operate and eligible to be licensed only for so long as the premises continues to be used for such purposes, the licence holder maintains their licence and the business carried on therein is in compliance with this By-law and all other applicable law:

(a) 8 Fennell Avenue West, Hamilton;

(b) 128 Parkdale Avenue North, Hamilton.

23. Subsections 10(4), 10(5) and 10(6) of Schedule 1 of By-law No. 07-170 are deleted and replaced with the following new subsections 10(4) and 10(5):

(4) When a Class A adult video store licence expires and is not or cannot be renewed or a Class A adult video store licence is otherwise surrendered or revoked, then upon receipt of a complete application which otherwise complies with this By-law, the Issuer of Licences shall carry out a selection process for a licence as follows:

(a) the available licence shall be advertised in the Hamilton Spectator newspaper and on the City’s website inviting the submission of applications within a specified period of time;

(b) a draw shall be conducted from all of the submitted, complete applications which otherwise comply with this By-law; and

(c) the winner of the draw may be issued a licence for an existing or new location provided that such existing or new location conforms to the criteria set out under subsection (2) and is approved by Council.
(5) No licence shall be issued under subsection (4) to an applicant who has an interest, whether as a corporation, a partnership or an individual, in a current and valid Class A adult video store licence.

24. Subsection 3(1) of Schedule 4 of By-law No. 07-170 is deleted and replaced with the following new subsection 3(1):

3(1)(a) No body-rub establishment shall be located and no body-rub establishment licence shall be issued except for body-rub establishments in areas as permitted by subsections (2) and (3); and

(b) no more than two body-rub establishment licences shall be issued.

25. Subsection 3(2) of Schedule 4 of By-law No. 07-170 is amended by deleting the words “Subject to subsection (3),”.

26. Subsection 3(3) of Schedule 4 of By-law No. 07-170 is deleted and replaced by the following new subsection 3(3):

(3) Despite subsection (2), the premises at the following municipal addresses licensed and in actual use as a body-rub establishment on April 14, 2010, are each deemed to be a location where one body-rub establishment is permitted to operate and eligible to be licensed only for so long as the premises continues to be used for such purposes, the business owner maintains their licence and the business carried on therein is in compliance with this By-law and all other applicable law:

(a) 893 King Street East, Hamilton;

(b) 549 Kenilworth Avenue North, Hamilton.

27. Subsections 3(4), 3(5) and 3(6) of Schedule 4 of By-law No. 07-170 are deleted and replaced with the following new subsections 3(4) and 3(5):

(4) When a body-rub establishment business owner licence expires and is not or cannot be renewed or a body-rub establishment business owner licence is otherwise surrendered or revoked, then upon receipt of a complete application
which otherwise complies with this By-law, the Issuer of Licences shall carry out a selection process for a licence as follows:

(a) the available business owner licence shall be advertised in the Hamilton Spectator newspaper and on the City’s website inviting the submission of applications within a specified period of time;

(b) a draw shall be conducted from all of the submitted, complete applications which otherwise comply with this By-law; and

(c) the winner of the draw may be issued a business owner licence for an existing or new location provided that such existing or new location conforms to the criteria set out under subsection (2) and is approved by Council.

(5) No business owner shall have an interest, whether as a corporation, a partnership or an individual, in more than one body-rub establishment business owner licence.

28. Paragraph 1(1)(s) of Schedule 25 of By-law No. 07-170 is amended by deleting the words “Schedule “31” of By-law 07-170 (Licence and Examination Fees)” and replacing them with “the User Fees and Charges By-law”.

29. Subsection 14(b) is deleted and replaced with following new subsection 14(b):

(b) unless such person pays all required fees pursuant to the User Fees and Charges By-law to the Issuer of Licences;

30. Subsection 20(b) of Schedule 25 of By-law No. 07-170 is deleted and replaced with the following new subsection 20(b):

(b) unless such person pays all required fees pursuant to the User Fees and Charges Bylaw and completes and submits all application forms required under this Schedule with the Issuer of Licences;

31. Subsection 22(b) of Schedule 25 of By-law No. 07-170 is deleted and replaced with the following new subsection 22(b):
(b) unless such person pays all required fees pursuant to the User Fees and Charges Bylaw and completes and submits all application forms required under this Schedule with the Issuer of Licences;

32. Section 23 of Schedule 25 of By-law No. 07-170 is deleted and replaced with the following new section 23:

23. The licence fees to be paid to the City for those licences referred to in this Schedule shall be as outlined in the User Fees and Charges By-law.

33. Subsection 49(19) of Schedule 25 of By-law No. 07-170 is deleted and replaced with the following new subsection 49(19):

(19) An administration fee shall be charged to a lessee of a taxicab for the late registration of a lease agreement with the Issuer of Licences in accordance with the User Fees and Charges By-law.

34. Schedule 31 of By-law No. 07-170 is deleted.

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

PASSED this day of , 20 .

________________________________________     ________________________________
Fred Eisenberger                                      CLERK
MAYOR                                               CLERK