

Authority: Item 8.4, Public Works Committee
Report PED18171/PW18067
CM: September 26, 2018
Ward: City Wide

Bill No. 320

CITY OF HAMILTON

BY-LAW NO. 18-320

To Amend City of Hamilton By-law No. 07-170, Being 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 amends Schedule 21 – Food Premises;

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

1. The amendments in this By-law include any necessary grammatical, numbering and lettering changes.
2. Schedule 21 of By-law No. 07-170 is deleted and replaced with Appendix “A” attached hereto.

PASSED this 19th day of December, 2018.

F. Eisenberger
Mayor

J. Pilon
Acting City Clerk

Appendix “A”

SCHEDULE 21

FOOD PREMISES

DEFINITIONS

1. In this Schedule:

“**Bar/Nightclub**” means a Food Premises when:

(a) the primary purpose of the Food Premises is any one or more of the following:

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

(b) the Food Premises provides seating in a licensed area, as set out in the Food Premises’ liquor licence, for less than 65% 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;

“**Drive-Through Facility**” means a Food Premises which offers food or drink though an attendant to persons remaining in vehicles;

“**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:

- (a) a dwelling unit, except a dwelling unit used as a Food Premises home business;
- (b) entirely exempt from R.R.O. 1990, Reg. 562 entitled “Food Premises” under section 2 of that Regulation;
- (c) in part exempt from R.R.O. 1990, Reg. 562 entitled “Food Premises” under section 3 of that Regulation; or
- (d) operated by a farmer, selling or offering for sale primarily produce from his or her agriculture operation and other Ontario agricultural operations;

“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;

“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; and

“Security Guard” means a person:

- (a) 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

- (b) who is licensed as a security guard under the *Private Security and Investigative Securities Act, 2005*.

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 Director of Licensing 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, entrances/exits, and exterior waste and recycling receptacles.
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 Director of Licensing.

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.
6. Every person operating a Food Premises with a Drive-Through Facility shall install and maintain waste and recycling receptacles located so as to be accessible to customers remaining in their vehicles.

PUBLIC HEALTH APPROVAL

7. A licence to operate a Food Premises shall not be issued until a Public Health Inspector has informed the Director of Licensing that all requirements under the *Health Protection and Promotion Act* and its regulations have been fully complied with.

POSTING OF CERTIFICATES OF INSPECTION

8. (a) 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.

(b) Where a premise described in subsection (a) 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.

(c) 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.

(d) When a Certificate of Inspection has been removed by a Public Health Inspector under subsection (c), 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

9. In addition to complying with sections 2 to 8 inclusive of this Schedule:

(a) No person shall operate a Food Premise 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 Director of Licensing a certificate from the Electrical Safety Authority that the premises complies with the Ontario Electrical Safety Code; and

(b) No person shall operate a Food Premise as a Bar/Nightclub unless, before the operation of the Bar/Nightclub commences, they have submitted to the Director of Licensing:

(i) a noise control plan, satisfactory to the Director of Licensing, 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 Director of Licensing, 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; and
- (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 Premise 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

10. Sections 10 to 13 inclusive of this Schedule apply to the Hess Village Entertainment District, 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) May 24 weekend through to the end of September 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 Bar/Nightclubs close and these individuals exit en masse.

11. A minimum of 3 Constables and ½ Sergeant shall be retained for the Hess Village Entertainment District Friday and Saturday (with Thursdays optional and based on needs) from 11:00pm to 4:00am beginning May 24 weekend through to the end of September.

12. Notwithstanding section 11 of this schedule, the Chief of Hamilton Police Services, or their designate, may:

- (a) change the commencement date of May 24 weekend or the September end date by giving 48 hours prior notice to the City;
- (b) suspend the requirement to retain 3 Constables and ½ Sergeant for any day or time period where they decide that such Officers are not required for public safety, nuisance control or public protection or where such Officers are not available; and

13. The City shall pay the cost of the Officers required under section 11.