

Committee of the Whole (2) Report

DATE: Tuesday, May 10, 2022

WARD(S): ALL

TITLE: BUSINESS LICENSING BY-LAW REVIEW AND
CONSOLIDATION

FROM:

Gus Michaels, Deputy City Manager, Community Services

ACTION: DECISION

Purpose

This report seeks approval from Council to make a series of modernizing amendments to the City's Business Licensing By-law and to incorporate such proposed changes into a new consolidated by-law.

Report Highlights

- The City's current Licensing By-law was approved by Council in 2005 and, since then, has had hundreds of amendments to add business categories, accommodate changing business needs, and enhance administrative processes.
- Pandemic emergency measures and resulting operational and administrative initiatives made obvious a number of gaps in the existing regulatory framework.
- In addition to the introduction of a new, consolidated by-law, this report proposes amendments to, amongst other things, accommodate licence applications other than in person (e.g., online or by e-mail), make allowances for online business models, increase monetary penalty amounts from \$350 to \$500, amend licensing thresholds to give equal affirmed penalties the same weight as by-law offence convictions under the Provincial Offences Act, enhance enforcement authorities, and make a number other changes to support new administrative processes.

Recommendations

1. THAT Council approve the amendments to licensing regulations, outlined in Attachment 1, in a manner satisfactory to the City Solicitor;
2. THAT a new Business Licensing By-law, incorporating the amendments in Recommendation No. 1 be enacted by Council; and
3. THAT staff be authorized to undertake any administrative and operational actions required to give effect to the recommendations of this report.

Background

The current iteration of the City's Licensing By-law was approved by Council in 2005. The by-law provides a licensing system for certain businesses in order to ensure the health and safety of persons, the protection of consumers and the mitigation of nuisances. The by-law sets licence application and renewal requirements, provides a system for reviewing, approving or refusing, suspending and appealing licences. It also provides for a set of administrative monetary penalties and fines, as well as other enforcement action to ensure compliance. Since its inception, Council has approved 35 amending by-laws with hundreds of amendments. As part of the Council-approved By-law Strategy, staff continue to review and consolidate the City's regulatory by-laws. In the case of the Licensing By-law, given its breadth and depth, staff are undertaking its review in stages. Through this report, staff are addressing a number of administrative and enforcement-related issues.

Previous Reports/Authority

Licensing [By-law 315-2005](#) (Consolidated).

Analysis and Options

The recommended amendments discussed below are a result of a months-long compilation of suggestions from staff, businesses, City Councillors and outside agencies. Several of the recommendations entrench changes to address an expansion of service delivery options as a result of the pandemic emergency.

Licence Cancellations Credits

Under current provisions, there is no refund for a licence issued. Licensing revenue is intended to cover administrative (e.g., processing, issuance) and enforcement (e.g., inspections, responding to complaints). However, staff are proposing that in certain cases, credits be issued for new licences. Specifically, when a business holds a licence and undergoes a change that requires a new application (for example, a change of location), staff are proposing that the pro-rated amount of the remaining tenure of the existing licensing be credited towards the amount for a new licence. For illustration purposes of the impact, if a business renews a licence for \$240 in May and due to a

change in location is required to obtain a new licence for \$360 in July, under the existing by-law provisions the licensee would have been required to pay a total of \$600 for 14 months of licensing. Under the proposed amendments, ten months of the renewal would be credited to the new licence application (or \$200); thus, the licensee would only pay end up paying \$400 for 14 months of licensing. Note that this does not apply to licences that are outright cancelled by a licensee or are otherwise suspended or revoked through enforcement action.

Accommodation of Alternative Application Methods

The closing of service counters across the City during the pandemic meant that many transactions could only be conducted electronically. Coming out of the pandemic, many of the virtual services established will remain to give clients a wider range of service options. However, current provisions in the Licensing By-law do not accommodate such service offerings, as in many instances they require applicants or licenses to attend City offices in person. Staff are recommending that the by-law be amended to account for the new range of service options.

Submission of Digital Images

Certain individual business licences, such as those for taxi drivers and adult entertainers require photographs of the licensee. Under current regulations, these must be passport photographs. In reality, and especially since the pandemic, submission of these photographs has been done electronically; however, no standards have been set as to size and resolution. With the launch of the City's licensing portal, staff are expecting many businesses to avail themselves of the more convenient process and to be submitting documents electronically, including photographs. Staff are therefore recommending that standards for images be established in the by-law.

Virtual Businesses from Home

Over the course of the pandemic, many businesses had to find alternative ways of operating and under regulatory constraints many others were established under different business models. In some cases, certain businesses could be conducted entirely from a person's home. For example, a taxicab brokerage could viably operate entirely from a home using a computer and the appropriate software, or even by just using a mobile device. However, under the assumptions underlying current regulations, a taxicab brokerage is only permitted where a brick-and-mortar taxicab brokerage operation is allowed. Therefore, a brokerage operating entirely as a home-office would not be permitted and the City would not issue a licence. The pandemic forced many people to work from home, and carry out activities that have traditionally not been permitted under zoning regulations, without any discernible negative impact. As such, staff are of the opinion that such activities can be permitted, subject to certain conditions, including that no manufacturing, assembly, or retail take place, no

equipment (other than home-office equipment) be present, and no nuisances are otherwise created. Businesses that qualify would be licensed as home offices and endorsed for the relevant business activity. It should be noted that although these endorsed licences would comply with the provisions of Zoning By-law 001-2021, when it is enacted, the current Zoning By-law 1-88, does not permit home office uses, except for healthcare professionals, and as such the City will not be able to issue licences until the new zoning provisions are enacted.

Authorized Agents for Body Rub Attendants and Adult Entertainers

Under current regulations, every applicant and licensee is eligible to be represented by an authorized agent for purposes of making applications, renewals, or otherwise complying with the provisions of the Licensing By-law. There are two licence categories (body rub attendants and adult entertainers) for which staff are of the opinion that this provision could be abused and used to the advantage of unscrupulous individuals with the intent of exploitation. It is widely recognized that sometimes body rub parlours and adult entertainment parlours have associations with organized human trafficking rings; in such cases, the individuals being trafficked are strictly controlled and rarely, if ever, allowed to contact with government or other agencies. In these cases, an authorized agent could simply be another way to isolate the victims of such traffickers. For this reason, staff are recommending that the option of an authorized agent not be provided to body rub parlour attendants and adult entertainers.

Additional Requirements for Pool Installers

Under section 9.0(1) and 9.0(2) of the City's Fence By-law, a property owner is required to obtain a swimming pool enclosure permit prior to erecting a pool. In addition, the owner is also required to ensure that temporary fencing, that satisfies the standards prescribed in the By-law, be in place before any excavation or erection takes place. In order to promote better compliance and to ensure that scrupulous installers are not penalized at the expense of those that may not follow the rules, staff are proposing that pool installers be required to ensure there is a permit obtained prior to commencing any work and that an adequate temporary fence be in place prior to any excavation or erection of a pool.

Authority to Revoke Licences

Under the current language of the by-law, the Chief Licensing Officer can only refuse an application or renewal on a variety of grounds, as provided in the By-law, but cannot apply this same criteria to revoke a licence during its tenure. This significantly limits the ability of the Chief Licensing Officer to deal with serious violations, where it is in the public interest to discontinue the operation of the business. Staff are proposing that the same criteria for which a licence application or renewal can be refused can also be applied to the revocation of a licence at any time.

Vehicle Inspection Fees

Businesses that require vehicles to be licensed also require those vehicles to be vetted for mechanical fitness and inspected to ensure they meet all other regulatory requirements. Under current provisions, such fees only apply to re-inspections and tend to vary across vehicle types. In addition, no fees currently apply to inspections resulting from a change of vehicle. Staff are recommending that all vehicles that are required to be licensed under the Business Licensing By-law be subject to the same re-inspection fee of \$130.00 and change of vehicle inspection fee of \$65.00.

Exemption to Tow Zone Pilot Program Participants

The Ministry of Transportation has been running a towing pilot on the 400-series highways since early 2022. The pilot allows only pre-approved companies to tow vehicles from the highways. There are several designated zones, with Vaughan being in Zone 3 and having two pre-approved companies: ComTow and JP Towing. The zone applies to Highway 400 only (it does not include the 407). The pilot may run up to five years, with the Province renewing its mandate on an annual basis, as deemed necessary. The requirements to be an approved company largely cover the City of Vaughan's licensing provisions. Enforcement of the tow zone pilot program's requirements is done by Ontario Provincial Police in the field, with Ministry staff following up on complaints and other administrative matters. The Ministry is requesting that tow operators that participate in the program be exempt from the City's licensing regulatory regime, as long as they do not provide any other tow services within the City. Given the program's administrative oversight and enforcement approach, staff do not believe granting such an exemption is problematic and are therefore recommending an amendment to the Licensing By-law to accommodate the Ministry's request.

Recovery of Costs to Achieve Compliance

Most of the City's regulatory by-laws contain provisions that allow the City to recover costs incurred when the City undertakes work to remedy a non-compliant condition. Staff are proposing to include similar language in the Business Licensing By-law.

Increase to Administrative Monetary Penalty Amounts

Since their inception, in 2009, administrative monetary penalty amounts have remained at \$350. Monetary penalties, under the Municipal Act, are intended to be non-punitive but act as a deterrence to non-compliance. The average CPI for the Toronto CMA in 2009 was 113.6 and in 2021 it was 144.3, for an increase of 27%. Applying this increase to the established penalty, yields an increase of \$94.50, which would adjust the penalty amount to \$444.50. Given the rate of inflation expected to be in the range of 5% for 2022, which would add approximately another \$22 to the amount, and that penalties are likely not to be adjusted again for at least five years, staff are

recommending that the amount for administrative monetary penalties under the Licensing By-law be set at \$500.

Administrative Monetary Penalties Under the Licensing Thresholds

In September of 2011, Council adopted licensing thresholds to guide the refusal of applications and renewals, as well as the suspension and revocation of licenses. The thresholds are based on offence type and severity as well as frequency and how long ago they occurred. Applicants or licensees that breach the thresholds and are refused a licence can appeal the decision to the City's Hearings Officer. At the time of their adoption, the licensing thresholds were based on convictions for the various offences listed, both under federal and provincial jurisdictional statutes. At the time, most municipalities were still charging under Provincial Offences Act for by-law infractions. Over the years, cities like Vaughan have designated an increasing number of by-laws under the Administrative Monetary Penalties ("AMPs") program. Penalties imposed under this program are adjudicated by a Screening Officer, at first instance, and a Hearings Officer, if the Screening Officer's decision is appealed. Strictly speaking, when such penalties are upheld, they are considered affirmed but are not considered convictions. However, from the standpoint of the administration of the City's licensing program there is no difference. To avoid confusion and to maintain the City's Licensing By-law as transparent as possible, staff are recommending that the language in the City's licensing thresholds be revised to include, and give the same weight to, affirmed administrative penalties as to convictions under the Provincial Offences Act.

Increases to Fees Beyond the Amount Stated in the Fees and Charges By-law

In its 2020 internal audit report, the City's auditor noted that:

Business license renewal notices are manually mailed out in advance. In some cases, the renewal period may extend past the renewal period outlined in the Fees and Charges By-law, resulting in outdated fees being applied. This has resulted in revenue loss of approximately \$9,370 from January to April 2019.

An extension of this issue is that although through the budget process fees are set out for the following two years, sometimes in the following year fee increases are different than had been anticipated, usually creating a shortfall in revenue. To address this issue, staff are recommending that the By-law be amended so that when a given year's increases exceed the previously anticipated fee rates (and thus are reflected inaccurately in the notices sent out prior to budget approval), the difference be applied to the following year's renewal, whether as a credit or debit.

Consolidation

The current Licensing By-law has been amended numerous times over the past 17 years. Aside from these changes, the by-laws format, references and language have become dated and in some cases misaligned with legislation, other City by-laws, regulations and policies. Staff have conducted a general review of the by-law to identify these issues and are proposing that a new consolidated Business Licensing By-law be approved. The new regulation is expected to be more accurate, transparent and user friendly.

Financial Impact

There are no material financial impacts to the City's budget as a result of the recommendations of this report.

Broader Regional Impacts/Considerations

There are no impacts anticipated as a result of the recommendations of this report.

Conclusion

The recommendations in this report support Council's Strategic Priorities, specifically Active, Safe and Diverse Communities, Citizen Experience, and Good Governance. The proposed regulatory enhancements and the introduction of a new consolidated Business Licensing By-law will create a more transparent and accessible regulation that is also better able to meet the current and future demands of providing multi-modal licensing services to the public, while also meeting the challenges of serving an ever-adapting and evolving business community.

For more information, Susan Kelly, Director and Chief Licensing Officer, By-law and Compliance, Licensing and Permit Services, ext. 8952.

Attachments

1. Proposed Amendments to Business Licensing Regulations

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Approved by



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