TO: Finance Administration and Corporate Services Committee

DATE: October 3, 2007

SUBJECT: AMENDMENTS TO THE CITY BUSINESS LICENSING BY-LAW (2004)-17551 AS A RESULT OF BILL 130 AMENDMENTS TO THE MUNICIPAL ACT

RECOMMENDATION:

a) That the proposed changes to the City Licensing By-law (2004)-17551" which reflect the changes in the Municipal Act and other regulatory changes, attached hereto as appendix A, be approved;

b) And that a By-law to amend City Licensing By-law (2004)-17551 to incorporate the changes be brought forward for Council's approval.

BACKGROUND:

The City has licensed various businesses since the 1800's. Since this time there have been a number of By-laws adopted to address issues and concerns of Council with regard to licensing.

In 2004 the City of Guelph adopted our current Business Licence By-law under the Municipal Act, 2001 which came into effect on January 1, 2003.

This report reviews changes proposed for the licensing by-law as a result of the enactment of Bill 130 and other regulatory changes. Staff are also conducting a comprehensive review of the business licensing by-law which will be brought forward for Council's consideration at a later date. At this time, the changes being proposed are largely administrative in nature, and are intended to bring the City’s by-law in line with the new legislation.
BILL 130 CHANGES

On January 1, 2007, Bill 130, the Municipal Statute Law Amendment Act, came into force and effect substantially changing the provisions pertaining to business licensing.

The amended act gives municipalities broader licensing and enforcement powers. As such, this report will list the areas of change in the Municipal Act which affect the City’s business licence bylaw and recommendations for changes to same.

a) Reasons for Licensing

Previously, municipalities were only permitted to license businesses for reasons of:

- health & safety,
- consumer protection
- nuisance control.

Although the Act no longer restricts licensing for the above reasons, staff are of the opinion that the City should still substantiate its reasons for requiring businesses to be licensed, and are recommending that the By-law be amended to reflect that purpose for licensing businesses is primarily for the health, safety and well-being of the public, where there is a municipal interest that is not otherwise legislated. This may include matters from building and fire safety to environmental health.

Staff is not recommending that the City license businesses for reasons of consumer protection and nuisance control. Licensing for the purpose of consumer protection has limited effectiveness. The City cannot guarantee the quality of goods and services provided and disputes regarding consumer goods or services can only be resolved through other avenues, such as personal litigation, the Ministry of Government Services, Consumer Protection section, and the better Business Bureau. As well, nuisance is difficult to quantify and more difficult to enforce through business licensing.

The purpose of issuing a business licence is to ensure that the well being of the public is maintained when attending the premise or using the services of a business. As such the licensing process demonstrates that the City has taken appropriate measures through inspections to ensure that the following goals and objectives are met:

* To establish standards/conditions that protect the public
* To require inspections of premises to ensure that the structures attended by the public are safe (pursuant to the Building Code and Fire Protection and Prevention Act)

The City that Makes a Difference
* To require that personal services, food and beverages are provided and prepared in a manner that do not risk public health or safety (pursuant to the Health Protection and Promotion Act)
* To enforce the standards and conditions of business licences by conducting periodic inspections
* To refuse to issue or to revoke/suspend business licences where the well-being of the public may be compromised or where there is non-compliance with City By-laws.

Currently the City’s licensing process may include inspections by one or more of the following: Building Services, City’s Fire Services, and Wellington Dufferin Guelph Health.

b) Elimination of 5-Year Mandatory Review

Although the Act no longer requires municipalities to conduct an automatic 5 year review of the By-law, the City will continue to conduct ongoing reviews and refinements as required.

c) Suspension of Licences

Under the new legislation, the licensing by-law can now provide that licenses can be suspended without a hearing for 14 days if it poses an immediate danger to health & safety and for 28 days if on a highway or municipal property under certain conditions. It is recommended that this provision be included in our by-law.

d) Penalties

Previously, businesses operating in contravention of the By-law were liable for fines up to a maximum penalty of $25,000 for individuals and $50,000 for corporations. The new legislation states that a municipality can establish its own system of fines within certain limits. A minimum fine shall not exceed $500, and the maximum fine shall not exceed $100,000 or $10,000 per day, except in the case of a special fine. The penalty provisions found in Section 429 of the Municipal Act now allow the municipality to establish a system of fines for continuous offences, multiple offences, escalating fines, and special fines. A person convicted of an offence relating to an adult entertainment establishment may, as before, have an additional penalty of up to one year imprisonment. Staff are recommending that the Licensing Bylaw be amended to incorporate the minimum and maximum fines as allowable under the new legislation.
e) Inspections

Under the new legislation a municipality has rights of entry for the purpose of carrying out an inspection relating to the business licensing. In addition, a provincial judge or justice of the peace may issue an order authorizing the municipality to enter on land for the purpose of carrying out an inspection relating to the business licensing by-law and also for other rights of entry. As such, staff are recommending that the by-law be amended to allow such inspections.

f) Categories of Fines

The new provisions in the Municipal Act allow for various categories of fines and for the fine maximums to be higher. A detailed schedule of fines to incorporate new categories will be considered in the comprehensive review of the by-law. We are also awaiting the experience of other municipalities and actual court fines which may ensue. As such, no amendments relating to categories of fines and maximum are being recommended at this time.

g) Administrative Penalties

Pursuant to section 151(1)(g) of the Municipal Act, municipalities are now able to issue administrative penalties if the municipality is satisfied that a person has failed to comply with any part of a system of licences established by the municipality. In addition, imposition of administrative penalties would require a comprehensive review in order to establish policies and an appeal process similar to the provisions relating to cancellation or refusal of licences. Since we currently have the ability to issue charges for non-compliance with the by-law or issue set fines which have a similar effect, staff are not recommending that we also impose administrative penalties.

h) Delegation of Authority to Hold Appeal Hearings

The City’s licensing by-law was amended in 2006 to provide that the FACS Committee will act as the body to conduct appeal hearings. Rules governing the conduct of hearings are set out in the Statutory Powers Procedures Act. This Act establishes procedural requirements for bodies conducting judicial hearings which could not be easily applied to Council meetings, such as the presentation of evidence, examination of witnesses, etc. The setting of a formal Council meeting would make it difficult to follow these procedures. This is why the by-law provides for appeals to be heard by a committee. As the ultimate authority for the decision to not issue, or to revoke or suspend a licence rests with Council, it is logical that the recommendation to do so comes from a committee comprised of members of Council in the same manner that recommendations are forwarded to Council by its standing committees.
Under the new legislation, a municipality has the option of delegating the hearing of appeals to a recommendation to not issue, or to revoke or suspend a business licence. Authority for the hearing can be delegated to the following:

(a) one or more members of its council or a council committee;
(b) a body having at least two members of whom at least 50 per cent are,
   (i) members of its council,
   (ii) individuals appointed by its council,
   (iii) a combination of individuals described in subclauses (i) and (ii); or
(c) an individual who is an officer, employee or agent of the municipality.

Staff are recommending that the current provisions of the by-law with respect to hearing of appeals be maintained.

**Other Regulatory Changes**

In addition to the Bill 130 changes affecting our business licence by-law, effective January 1, 2007 there have been regulatory changes relating to electrical contractors, and there is no longer a requirement for them to be licensed by municipalities. The category is to be removed from the by-law. Likewise, as a result of a recommendation approved by Council in June 2005, lodging houses are now regulated through Building requirements and Zoning provisions, and this licence category is also to be removed from the by-law.

Similarly, reference to the Tobacco Control Act is being changed to the Smoke Free Ontario Act as the provisions of the provincial legislation came into force and effect on May 31, 2006. These provisions generally supersede the City’s smoking by-law.

**CORPORATE STRATEGIC PLAN:**

These recommendations support goal #2: A healthy and safe community where life can be lived to the fullest.

**FINANCIAL IMPLICATIONS:**

Not Applicable

**DEPARTMENTAL CONSULTATION:**

Consultation with Legal Services staff regarding legislative changes.
COMMUNICATIONS:

A notice to the public of the meeting to consider the By-law amendments will appear in the Tribune no later than 14 days prior to the Council Public meeting as per our procedures under the City’s notice provisions By-law (2003)-17290.

ATTACHMENTS:

Attachment "A" : Summary of proposed changes to the City Business Licensing By-law (2004)-17551 as a result of Bill 130 amendments to the Municipal Act and other regulatory changes.

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SUMMARY OF CHANGES TO THE CITY BUSINESS LICENSING BY-LAW (2004)-17551 AS A RESULT OF BILL 130 AMENDMENTS TO THE MUNICIPAL ACT AND OTHER REGULATORY CHANGES

- Change the purposes of licensing from “health & safety, consumer protection, and nuisance control” to “Health, safety and the wellbeing of the people in the city of Guelph where there is a Municipal Interest”.
- Add provision for the suspension of licenses for 14 or 28 days under specific circumstances.
- Increase penalties from a maximum of $25,000 for individuals and $50,000 for corporations to a maximum fine not to exceed $100,000 or $10,000 per day, except in the case of a special fine.
- To allow rights of entry for municipal officers by right and through order of a judge or justice of the peace.
- Delete Electrical contractors as a licensed category.
- Delete Lodging houses as a licensed category.
THE CORPORATION OF THE CITY OF GUELPH

By-Law Number (2007)-XXXXXX

Being a By-law to amend By-law (2004)-17551 respecting the licensing of Businesses operating within the City of Guelph.

WHEREAS pursuant to Part II, Section 10(2) 11 of the Municipal Act, S.O. 2001, C.25 as amended, a single tier municipality has the authority to pass by-laws respecting business licensing;

AND WHEREAS pursuant to Part IV, Section 151(1) of the Municipal Act, S.O. 2001, C.25 as amended, (“The Act”), a municipality may provide for a system of licences with respect to a business.”;

AND WHEREAS pursuant to Part IV, Section 151(2) of the Municipal Act, S.O. 2001, C.25 as amended, (“The Act”), a municipality has the power to suspend a licence under certain conditions;

AND WHEREAS pursuant to Part XIV, Sections 429 and 430 of the Municipal Act, S.O. 2001, C.25 as amended a municipality has the authority to establish a system of fines for offences including an additional penalty of one year imprisonment for a person convicted of an offence for a contravention to the by-law dealing with adult entertainment establishments.;

AND WHEREAS Electrical Contractors and Master Electricians are no longer licensed by the City of Guelph by virtue of the fact that effective January 1, 2007 Electrical Contractors and Master Electricians are required to obtain a licence from the Province of Ontario.

AND Whereas Lodging Houses no longer require a business licence by the City of Guelph as they are regulated through the City’s zoning by-law as a result of Council approved recommendations in the Shared Rental Housing report dated June 2005;
AND WHEREAS The Smoke Free Ontario Act came into force and Effect on May 31, 2006 which replaced the provisions in the City of Guelph “Smoking By-law”, By-law Number (1995)-14892.

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE CITY OF GUELPH ENACTS AS FOLLOWS:

That the following amendments be made to By-law (2004)-17551:

1. That the preamble be deleted and replaced with the following:

“WHEREAS pursuant to Part II, Section 10(2) 11 of the Municipal Act, S.O. 2001, C.25 as amended, a single tier municipality has the authority to pass by-laws respecting business licensing;

AND WHEREAS pursuant to Part IV, Section 151(1) of the Municipal Act, S.O. 2001, C.25 as amended, (“The Act”), a municipality may provide for a system of licences with respect to a business.”;

AND WHEREAS it is desirable and expedient to impose a system of licences for the purpose of the health, safety and well-being of people in the City of Guelph where the City of Guelph has an interest;

AND WHEREAS pursuant to Part XIV, Section 436 of the Municipal Act, S.O. 2001, C.25 as amended a municipality has the power to pass bylaws providing that the municipality may enter on land to carry out an inspection to ensure that the By-laws, directions or orders of a municipality and condition of a license are being complied with.

AND WHEREAS pursuant to Part XIV, Sections 429 and 430 of the Municipal Act, S.O. 2001, C.25 as amended a municipality has the authority to establish a system of fines for offences including an additional penalty of one year imprisonment for a person convicted of an offence for a contravention to the by-law dealing with adult entertainment establishments;

2. That all references to health and safety, nuisance control and consumer protection be deleted in the text of the by-law.

3. That Section 12(b) 1. be added as follows:
“12.(b) 1. City Staff may exercise its power of entry to an adult entertainment establishment at any time of the day or night.”

4. That section 12(c) 1. be added as follows:

“12.(c) 1. The Municipality may undertake inspections pursuant to an order of a judge or justice of the peace for the purpose of carrying out an inspection.”

5. That the reference in section 17.(b) to section “18.(a)” be changed to Section “17(a)”.

6. That Section 22.1 (a) and (b) be added as follows:

(a) Notwithstanding the forgoing the Council may, if satisfied that the continuation of a business poses an immediate danger to the health or safety of any person or to any property, for the time and on such conditions as it considers appropriate, without a hearing, suspend a licence for a period not to exceed 14 days, subject to the following:

Before suspending the licence, the Clerk shall provide the licensee with the reasons for the suspension, either orally or in writing, and an opportunity to respond to them.

(b) Notwithstanding the forgoing the Council may, on such conditions as it considers appropriate, without a hearing, suspend a licence authorizing a business to operate on a highway or other property of the municipality or its local boards for a period not exceeding 28 days for the following reasons:

1. The holding of a special event.
2. The construction, maintenance or repair of the property.
3. The installation, maintenance or repair of a public utility or service.
4. Pedestrian, vehicular or public safety or public health.

7. That in section 23.(b) the word “knowingly” be added after the word “person”.

8. That Section 23.(c) be added as follows:
“23.(c) Every contravention of this by-law is hereby designated as a continuous offence.”

9. That sections 24.(a) and 24.(b) be deleted and replaced with the following:

“24.(a) Except as otherwise provided in this By-law, every person or corporation who is convicted of an offence under any provision of this By-law shall be liable to a fine not to exceed $100,000;

(b) A person who is convicted of an offence for a contravention in this by-law dealing with and adult entertainment establishment, including a business providing goods and services designed to appeal to erotic or sexual appetites or inclinations may be liable to a term of imprisonment not exceeding one year in addition to any other applicable penalties .”


14. That Schedule 1, Adult Entertainment Establishment Section 6, Penalties be deleted.

15. That Schedule 2, Adult Entertainment Retail Section 6, Penalties be deleted.

16. That in Schedule 3, Alternative Health Care, Section 5.(a) (ii), entitled Conditions, the words “a City Official having legal authority under this bylaw to view such documents” be deleted and replaced with “an Officer”.

17. That Schedule 13, Flea Markets, Section 7, Penalty be deleted.
18. That Schedule 14, Food Shop, Section 7, Penalty be deleted.

19. That in Schedule 28, Retail Business, Section 5 the following be added after the word “Goods”: “appealing to, or designed to appeal to erotic or sexual appetites or inclinations”.

20. That Schedule 28, Retail Business, Section 6, Penalty be deleted.


22. That this by-law come into force and effect on the day it is passed with the exception of section 6. that is to come into force and effect on the day when the City’s set fines have been approved.

Passed this XX day of XXXXX, 2007

Mayor

Clerk