

To:	Finance and Administration Committee	Item:	FA-07-221	Date of Report:	November 14, 2007
From:	Rick Stockman Corporate Services Commissioner	File:	D2110 0275 2007	Date of Meeting:	December 4, 2007
Subject:	<i>System of Business Licensing Administrative Penalties and Establishment of Hearings Officer</i>			Ward(s):	All
PUBLIC REPORT					

1.0 PURPOSE

This report recommends the establishment of a system of administrative penalties as an additional means of enforcing the Licensing By-law and the establishment of the position of a Hearings Officer to whom Council may delegate powers of decision.

2.0 RECOMMENDATION

It is recommended to Council:

1. That Council enact a by-law to further amend Licensing By-law 120-2005 and General Fees and Charges By-law 13-2003 to establish a system of administrative penalties as an additional means of enforcing the Licensing By-law in the form of amending by-law comprising Attachment 1 to Report FA-07-221;
2. That Council enact a by-law to establish the position of Hearings Officer to whom Council may delegate powers of decision in the form of by-law comprising Attachment 2 to Report FA-07-221; and
3. That the City Manager report back with recommendations respecting qualified candidates for the appointment of a Hearings Officer and a proposed rate at which the Hearings Officer is to be remunerated.

3.0 EXECUTIVE SUMMARY

Bill 130, the *Municipal Statute Law Amendment Act, 2006*, further amended the *Municipal Act, 2001* on Jan 1/07, including by permitting municipalities to establish a system of administrative penalties for the enforcement of business licensing by-laws and by permitting a municipal council to delegate quasi-judicial and other powers. This report's recommendations seek to implement these new powers to improve enforcement of the Licensing By-law.

4.0 INPUT FROM OTHER SOURCES

- City Solicitor

5.0 ANALYSIS

5.1 Licensing By-law Enforcement Challenges

- Enforcement of the Licensing By-law currently includes
 - Administrative proceedings relating to the suspension, revocation or refusal to renew a licence;
 - Proceedings in the Ontario Court of Justice pursuant to the *Provincial Offences Act* ("Prosecution"); and
 - On occasion, proceedings in the Superior Court of Justice seeking injunctive and other relief.
- Enforcement of the Licensing By-law is challenged in several ways.
 - Prosecutions are hampered by the persistent lack of judicial and other resources in the Ontario Court of Justice sometimes resulting in significant delays.
 - Delay in Prosecutions hinders their effectiveness as a means of encouraging compliance and, if significant, can compromise their outcome.
 - Superior Court proceedings consume significant resources and are reserved for the most egregious of contraventions.
- An administrative penalty is, as the title suggests, a penalty imposed directly by the regulatory authority upon an offender within the context of an administrative process rather than a judicial process.
- A system of administrative penalties can be a useful tool that may encourage compliance with the Licensing By-law without, at first instance, the threat of
 - licence suspension or revocation;
 - Prosecution; or
 - Superior Court proceeding.

- The proposed system of administrative penalties incorporates the following features for the benefit of the person against whom an administrative penalty is imposed ("Person").¹
- (a) - The proposed penalty is modest.
 - (c) - A penalty notice must be given to the Person as soon as is reasonably practicable and must include basic information that will inform the Person of the contravention, the penalty, the Person's right to request a review of the penalty and of the consequences in the event that the penalty is not reviewed.
 - (e)(i) - The Person has a time-limited right to request a review of the administrative penalty by a Hearings Officer.
 - (e)(ii) - The Person has a time-limited right to request an extension of the time for requesting a review of the administrative penalty by a Hearings Officer.
 - There is no fee for requesting a review of an administrative penalty.
 - (e)(iv) - The Person has a right to be heard by the Hearings Officer.
 - (e)(iii) – The Person is given reasonable notice of the date, time and place fixed for the Hearing.
 - (e)(v) – The Hearings Officer may extend the time for requesting a review of the administrative penalty.
 - (e)(vi) - The Hearings Officer may, in appropriate circumstances,
 - cancel or reduce the administrative penalty; and
 - extend the time for payment of an administrative penalty.
 - (f) - The Director, Municipal Law Enforcement and Licensing Services, has a residual discretion to cancel, reduce or to extend the time for payment of an administrative penalty. This is intended to address obvious errors without requiring a Person to pursue review by a Hearings Officer.
 - (h) - Where the Person pays an administrative penalty that is subsequently cancelled or reduced, the Person is refunded the difference.
 - (i) – Where the Person pays an administrative penalty within a prescribed time, the Person will not be liable for an offence respecting the same contravention.

¹ References are to subparagraphs of the proposed section 16.1 of the Licensing By-law as set out in section 7 of the proposed amending by-law comprising Attachment 1.

- It is also proposed to improve efficiency in the administration of the Licensing By-law.²
 - (2) - A facsimile transmission number and e-mail address may be required as part of an application for a licence or renewal of licence.
 - (3) – An application for a licence or renewal of licence may be denied if the applicant is indebted to the City in respect of an administrative penalty.
 - (6) – Any notice (including a penalty notice) may be given in writing by facsimile transmission or by e-mail.
 - (7) – The power to grant exemptions would be delegated to the Director. The person requesting the exemption would have the right to request a review of the Director's decision by the Hearings Officer. That hearing would not be scheduled until the fee is paid. The Hearings Officer's decision would be final.

5.2 Hearings Officer

- As noted, a system of administrative penalties should provide an opportunity for the Person to request a review of the administrative penalty by an independent person who has the power to cancel, reduce or extend the time for payment of the administrative penalty. For this purpose, it is proposed to establish the position of a Hearings Officer.
- Attachment 2 is a proposed by-law that seeks to
 - provide Council with an opportunity to appoint an appropriately qualified candidate in a manner that ensures accountability and transparency; and to
 - preserve the Hearings Officer's independence in the specific exercise of a "Delegated Power of Decision".
- Attachment 2 proposes that Council would delegate to the Hearings Officer the power to make "Delegated Powers of Decision" which is defined to mean a power or right that Council would confer by specific by-law to make a decision deciding or prescribing
 - The legal rights, powers, privileges, immunities, duties or liabilities of any person or party, or
 - The eligibility of any person or party to receive, or to the continuation of, a benefit or licence, whether the person is legally entitled thereto or not.
- For example, as noted in Section 5.1 of this report, it is proposed that one of the Hearings Officer's responsibilities would be to make "Delegated Powers of Decision" in

² References are to sections of the proposed amending by-law comprising Attachment 1.

relation to the Licensing By-law including in relation to its proposed system of administrative penalties and requests for exemptions.

- Other future potential delegations to the Hearings Officer that Council may consider include:
 - Appeals against muzzle and control orders issued under the City’s Responsible Pet Owners By-law;
 - Hearings under the Taxicab Licensing By-law; and
 - Requests to review parking administrative penalties (in the event that Council establishes a system of parking administrative penalties)

6.0 FINANCIAL IMPLICATIONS

- Administrative penalties are intended to encourage compliance. An ancillary benefit is that they will represent some cost recovery. The following provides an estimate of the expected costs and recovery.
- The following table summarizes the expected enforcement resources required to apply the new administrative penalties system

**Table 1
Administrative Penalties Enforcement Resources**

	Officer	Supervisor	Clerk	Technician	Total
	(Time in hours)				
Receive Complaint	0.5				0.5
Initial Inspection	1.5				1.5
Prepare Notice/Work Order	0.5		0.5		1
Follow Up Inspection	1.0				1
Communications			1.5		1.5
License Review				2.5	2.5
General		0.5			0.5
Total Hours	3.5	0.5	2.0	2.5	8.5

Note: Hearing Officer not included in cost.

The following table summarizes the estimated cost for issuing an administrative penalty

Table 2
Administrative Penalties Enforcement Costs

	Rate	Time	Cost
Officer	32.48	3.5	113.68
Supervisor	34.39	0.5	17.20
Clerk	24.29	2.0	48.58
Technician	30.73	2.5	76.83
Sub Total		8.5	256.28

Employee Benefits @ 20%	51.26
Overhead Allocation @ 25%	64.07
Total	<u>371.61</u>

Note: does not include cost of vehicle

- Table 2 indicates that the cost of issuing an administrative penalty is in the \$375 - \$400 range excluding vehicle or hearing costs.
- The proposed by-law comprising Attachment 1 suggests an administrative penalty of \$250. This proposed penalty only partially recovers the cost of issuing an individual administrative penalty, however, it is believed that \$250 is appropriate for this new initiative.
- The purpose of applying the new system of administrative penalties is to encourage compliance without being penal. It is proposed to re-evaluate from time to time the amount of the administrative penalty in terms of actual administrative costs and the effectiveness in encouraging compliance.
- As noted in section 5, it is proposed that there would be no fee for making a request for review of an administrative penalty or for an extension of time to request the review.
- The following administrative fees are proposed:
 - Each request of a Hearings Officer for an exemption to the Licensing By-law - \$100
 - Each failure to attend a hearing - \$100
 - Each late payment of an administrative penalty - \$50

- Because this is a new initiative for the City of Oshawa, and because there is no history with other municipalities, there is no data available upon which to base estimates of frequency.
- The 2008 Budget submission will include an additional \$75,000 in cost recovery derived from administrative penalties which equates to 300 assessed penalties or more than 1 per working day. This estimate will be reviewed at the end of 2008.

7.0 RESPONSE TO THE COMMUNITY STRATEGIC PLAN

- The recommendations in this report are consistent with Objective C1 by better coordinating enforcement activities within the City.

Original Signed By

Jerry Conlin, Director,
Municipal Law Enforcement and Licensing Services

Original Signed By

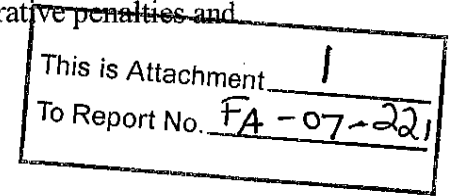
Rick Stockman, Commissioner
Corporate Services Department

(DJP)



By-Law _____
of The Corporation of the City of Oshawa

Being a By-law to further amend Licensing By-law 120-2005, as amended, and the General Fees and Charges By-law 13-2003, as amended, to provide for a system of administrative penalties and administrative fees.



WHEREAS:

1. Council of The Corporation of the City of Oshawa considers it desirable and necessary to further amend Licensing By-law 120-2005, as amended, and the General Fees and Charges By-law 13-2003, as amended, to provide for a system of administrative penalties and administrative fees as an additional means of encouraging compliance with the Licensing By-law.

NOW THEREFORE the Council of The Corporation of the City of Oshawa enacts as follows:

1. Section 2 of By-law 120-2005, as amended, ("Licensing By-law") is further amended by adding each of the following definitions:

(a) "Hearings Officer" means a person from time to time appointed by Council pursuant to the Hearings Officer By-law.

(b) "Officer" means each person authorized by section 10 of this By-law to inspect.

2. Paragraph 4(a) of the Licensing By-law is amended by adding the following sentence:

"Without limitation, the Director may require an applicant to provide each applicant's name, address, telephone number, facsimile transmission number and e-mail address."

3. Paragraph 4(d) of the Licensing By-law is amended by deleting in clause (7) the last word, "or" and by adding the following clause:

"(7.1) notwithstanding the preceding clause 4(d)(7), the applicant is indebted to the City in respect of an administrative penalty imposed pursuant to section 16.1; or"

4. Section 9 of the Licensing By-law is amended by deleting its text and by substituting the following:

"Each applicant or, where a licence has been issued, each licensee shall advise the Director of any change in any information provided pursuant to paragraph 4(a) of this By-law by providing to the Director notice of such change within fifteen (15) days of the date of such change. Failure to comply with this section constitutes an offence."

5. Paragraph 14(e) of the Licensing By-law is amended by deleting its text and by substituting the following:

“A decision by Council to revoke, suspend or refuse a licence shall be effective when notice of the decision has been given to the person or applicant.”

6. The Licensing By-law is further amended by adding the following section:

14.1 Notices

- (a) Any notice pursuant to this By-law may be given in writing in any of the following ways and is effective:
- i) on the date on which a copy is delivered to the person to whom it is addressed;
 - ii) on the fifth day after a copy is sent by registered mail to the person’s last known address;
 - iii) upon the conclusion of the transmission of a copy by facsimile transmission to the person’s last known facsimile transmission number; or
 - iv) upon the sending of a copy by e-mail transmission to the person’s last known e-mail address.
- (b) For the purpose of paragraph 14.1(a) of this By-law, the person’s last known address, last known facsimile transmission number and last known e-mail address shall be deemed to include those provided pursuant to paragraph 4(a) of this By-law as they may be changed pursuant to section 9 of this By-law.

7. The Licensing By-law is further amended by adding the following section:

14.2 Exemptions

- (a) The Director may exempt any person from all or any part of the Licensing By-law where the Director is satisfied that the granting of the exemption would maintain the general intent and purpose of the Licensing By-law.
- (b) The Director may impose such conditions as the Director determines are appropriate in relation to an exemption granted by the Director.
- (c) Where a person is denied an exemption by the Director or is dissatisfied with any condition imposed by the Director in relation to an exemption, the person may request a review by the Hearings Officer of the Director’s denial or condition in accordance with this paragraph 14.2(c).
- i) The person’s right to request a review expires on the tenth (10th) day after notice of the Director’s decision is given to the person at which time the Director’s decision is final and not subject to review.

- ii) The hearing of the review request under clause 14.2(c)i) shall not be scheduled until the person has paid the fee from time to time prescribed by the City's General Fees and Charges By-law.
- iii) The person shall be given seven (7) days' notice of the date, time and place of the hearing of the review request under clause 14.2(c)i).
- iv) The Hearings Officer shall not make a determination with respect to a review request under clause 14.2(c)i) unless the Hearings Officer has given each of the person and the Director an opportunity to be heard.
- v) The Hearings Officer may affirm the Director's decision or, alternatively, may exempt the person from all or any part of the Licensing By-law where the Hearings Officer is satisfied that affirming the Director's decision or granting an exemption would maintain the general intent and purpose of the Licensing By-law.
- vi) The Hearings Officer may impose such conditions as the Hearings Officer determines are appropriate in relation to an exemption granted by the Hearings Officer.
- vii) The decision of a Hearings Officer and any condition imposed by the Hearings Officer in relation to an exemption granted by the Hearings Officer are final and not subject to review.

8. The Licensing By-law is further amended by adding the following section:

16.1 Administrative Penalties

- (a) Each person who contravenes any provision of this By-law, including any provision of its Schedules, shall, upon issuance of a penalty notice in accordance with this section 16.1, be liable to pay to the City an administrative penalty in the amount of \$250.
- (b) An Officer who finds that a person has contravened any provision of this By-law, including any provision of its Schedules, may issue a penalty notice addressed to the person.
- (c) The penalty notice shall be given to the person to whom or to which it is addressed as soon as is reasonably practicable and shall include the following information:
 - i) Particulars of the contravention;
 - ii) The amount of the administrative penalty;
 - iii) Information respecting the process by which the person may exercise the person's right to request a review of the administrative penalty; and
 - iv) A statement advising that an administrative penalty will, unless cancelled or reduced pursuant to the review process, constitute a debt of the person to the City.
- (d) No Officer may accept payment of an administrative penalty.

- (e) A person who receives a penalty notice may request a review of the administrative penalty by the Hearings Officer in accordance with this paragraph 16.1(e).
 - i) The person's right to request a review expires on the tenth (10th) day after the penalty notice is given to the person.
 - ii) The person's right to request that the Hearings Officer extend the time to request a review expires on the twentieth (20th) day after the penalty notice is given to the person at which time the administrative penalty shall be deemed to be affirmed.
 - iii) The person shall be given seven (7) days' notice of the date, time and place of the hearing of a review request under clause 16.1(e)i) or an extension request under clause 16.1(e)ii).
 - iv) The Hearings Officer shall not make a determination with respect to a review request under clause 16.1(e)i) or an extension request under clause 16.1(e)ii) unless the Hearings Officer has given each of the person, the Director and the Officer who issued the penalty notice an opportunity to be heard.
 - v) The Hearings Officer may affirm the administrative penalty or extend the time to request a review of an administrative penalty.
 - vi) The Hearings Officer may cancel or reduce the administrative penalty or may extend the time for payment of the administrative penalty only where the Hearings Officer is satisfied that doing so would maintain the general intent and purpose of the Licensing By-law and that
 - (1) there is reason to doubt that the person contravened the Licensing By-law;
 - (2) the person took all reasonable steps to prevent the contravention; or that
 - (3) the cancellation, reduction or extension of the time for payment is necessary to relieve undue financial hardship.
 - vii) The decision of a Hearings Officer is final and not subject to review including review by any Court.
- (f) The Director may at any time cancel, reduce or extend the time for payment of an administrative penalty, including any late payment fee imposed pursuant to the General Fees and Charges By-law.
- (g) An administrative penalty that is deemed to be affirmed pursuant to clause 16.1(e)ii) or that is affirmed or reduced or in respect of which the time for payment has been extended pursuant to clause 16.1(e)v) or paragraph 16.1(f) constitutes a debt to the City of each person to whom or to which the penalty notice was given.
- (h) Where a person has paid an administrative penalty that is then cancelled or reduced pursuant to clause 16.1(e)v) or paragraph 16.1(f), the City shall refund the amount cancelled or reduced.
- (i) Where an administrative penalty is paid within fifteen (15) days after the date that it becomes due and payable, no person to whom the penalty notice was given shall be liable for an offence in respect of the contravention described in the penalty notice.

- (j) Where a person makes a review request under clause 16.1(e)i) or an extension request under clause 16.1(e)ii) and fails to appear at the time and place scheduled for a hearing of the request, the person shall pay to the City an administrative fee as from time to time prescribed by the General Fees and Charges By-law.
- (k) Where an administrative penalty is not paid within fifteen (15) days after the date that it becomes due and payable, each person to whom the penalty notice was given shall pay to the City a late payment administrative fee as from time to time prescribed by the General Fees and Charges By-law.

9. The General Fees and Charges By-law 13-2003, as amended, is further amended by adding to its Schedule "A" within the table entitled, "Licensing – Annual Fee Unless Otherwise Noted", the following rows:

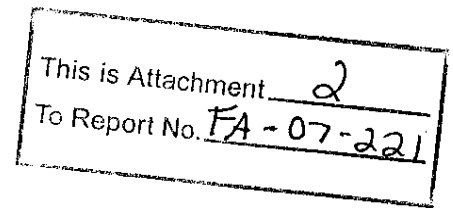
Each request of a Hearings Officer for an exemption to the Licensing By-law	\$100
Each late payment of an administrative penalty	\$50
Each failure to attend hearing before Hearings Officer	\$100

10. This By-law is in effect on January 1, 2008.

ENACTED AND PASSED this ___ day of _____, 2007

J. Gray, Mayor

S. Kranc, City Clerk



Being a By-law to establish the position of Hearings Officer.

WHEREAS:

1. Council of The Corporation of the City of Oshawa considers it desirable and necessary to establish the position of a Hearings Officer to whom may be delegated quasi-judicial and other authority under various City By-laws.

NOW THEREFORE the Council of The Corporation of the City of Oshawa enacts as follows:

1. In this By-law,
 - (a) “Child” means a child born within or outside marriage and includes an adopted child and a person whom a parent has demonstrated a settled intention to treat as a child of her or his family;
 - (b) “City” means The Corporation of the City of Oshawa;
 - (c) “Council” means the council of the City;
 - (d) “Delegated Power of Decision” means a power or right, conferred by or under a City By-law, to make a decision deciding or prescribing,
 - i) the legal rights, powers, privileges, immunities, duties or liabilities of any person or party, or
 - ii) the eligibility of any person or party to receive, or to the continuation of, a benefit or licence, whether the person is legally entitled thereto or not.
 - (e) “Hearings Officer” means the person from time to time appointed by Council pursuant to section 3 of this By-law;
 - (f) “Parent” means a person who has demonstrated a settled intention to treat a child as a member of her or his family whether or not that person is the natural parent of the child; and
 - (g) “Spouse” means a person to whom the person is married or with whom the person is living in a conjugal relationship outside marriage.
2. The position of Hearings Officer is established for the purpose of exercising Delegated Powers of Decision.
3. A Hearings Officer shall be appointed by Council on the recommendation of the City Manager in consultation with the City Solicitor which recommendation shall give preference to an eligible candidate:

- (a) with knowledge of and experience in administrative law; and
 - (b) of good character.
4. The following are not eligible for appointment as a Hearings Officer:
- (a) An employee or member of Council of the City;
 - (b) The Child of a person referenced in paragraph 4(a);
 - (c) The Parent of a person referenced in paragraph 4(a);
 - (d) The Spouse of a person referenced in paragraph 4(a); or
 - (e) A person indebted to the City other than
 - i) in respect of current real property taxes; or
 - ii) pursuant to an agreement with the City the terms with which the person is in compliance.
5. The Hearings Officer shall hold office for the term or remainder of the term of the Council that appointed the Hearings Officer and thereafter until the Hearings Officer is reappointed or a successor is appointed pursuant to this By-law.
6. The Hearings Officer shall be remunerated at the rate from time to time established by Council.
7. No person shall attempt, directly or indirectly, to communicate with or influence a Hearings Officer respecting the determination of an issue respecting a Delegated Power of Decision in a proceeding that is or will be pending before the Hearings Officer except a person who is entitled to be heard in the proceeding or the person's lawyer or licensed paralegal and only by that person or the person's lawyer or licensed paralegal during the hearing of the proceeding in which the issue arises. Failure to comply with this section constitutes an offence.
8. Section 7 does not prevent a Hearings Officer from seeking and receiving legal advice including from a lawyer in the City's Legal Services.
9. The functions of a secretary-treasurer shall be provided for the Hearings Officer by City civic administration including, without limitation, the making and keeping of minutes and records of all applications and the decisions thereon and of all other official business of the Hearings Officer.
10. Section 253 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended (Inspection of Records) applies with necessary modifications to documents made or kept pursuant to section 9.
11. Proceedings before a Hearings Officer shall be subject to the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22.

12. This By-law is in effect on January 1, 2008.

ENACTED AND PASSED this ____ day of _____, 2007

J. Gray, Mayor

S. Kranc, City Clerk