

# **CITY OF HAMILTON LICENSING TRIBUNAL**

## **APPEAL PROCESS<sup>1</sup>**

### **BUSINESS LICENSING BY-LAW NO. 07-170<sup>2</sup>**

#### **FUNCTION OF THE HAMILTON LICENSING TRIBUNAL**

1. The Hamilton Licensing Tribunal conducts the hearing to decide whether or not to uphold the refusal of the Issuer of Licences to issue a business licence, and/or whether or not to revoke, suspend or have conditions imposed on a business license issued under the Business Licensing By-law. When conducting a hearing, the members of the Hamilton Licensing Tribunal act as an administrative tribunal.
2. After holding a hearing, the Hamilton Licensing Tribunal may uphold or dismiss the refusal of the Issuer of Licenses to issue a business licence, and/or revoke, suspend or have conditions imposed on the business licence.

#### **(1) REFUSAL TO ISSUE A LICENCE - NOTICE OF APPEAL**

1. Issuer of Licenses may refuse to issue a business licence by issuing a Notice of Refusal. A Notice of Appeal may be filed by the Applicant for a Licence that was refused by the Issuer of Licences or a legal representative of the Applicant. A copy of the Notice of Appeal Form is available at the end of this document.
2. A Notice of Appeal must be sent by registered mail or personally delivered to the Secretary of the Hamilton Licensing Tribunal within thirty (30) days of the date contained in the Notice of Refusal.
3. A non-refundable appeal fee of \$195.00 (\$172.57+HST) (2024) must accompany the Notice of Appeal. Please make all cheques or money orders payable to the "City of Hamilton". Do not send cash in the mail.

#### **(2) RECOMMENDATION OF SUSPENSION OR REVOCATION OF A LICENCE**

1. When the Issuer or Licences has recommended the suspension or revocation of an existing licence, the Issuer of Licences will send a dated

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<sup>1</sup> This document is intended to provide an outline of the appeal process before the Hamilton Licensing Tribunal for Applicants/Licensees. It is not a comprehensive description of the appeal process and the appeal process for each hearing may vary depending on the circumstances.

<sup>2</sup> In addition to the Business Licensing By-law No. 07-170, the appeal process is governed by the *Statutory Powers Procedure Act*.

recommendation to suspend or revoke to the Licensee and the Secretary of the Hamilton Licensing Tribunal which will include the grounds upon the recommendation is being made.

2. A Licensee who receives recommendation to suspend or revoke is entitled to a hearing before the Hamilton Licensing Tribunal.

### **LATE OR INCOMPLETE NOTICE OF APPEAL**

1. Where the Secretary determines that the Notice of Appeal received from the Applicant is incomplete (e.g. missing reasons for the appeal or the fee), the Secretary will send a letter requesting that the Notice of Appeal be completed by the date indicated on the letter. If the Notice of Appeal is not completed by the indicated date, the Appeal will be deemed late and not accepted by the Secretary without the permission of the Licensing Tribunal. The Applicant will have an option to bring a motion to the Licensing Tribunal to extend the time for filing the appeal.
2. Where the Secretary determines that the Notice of Appeal is late (i.e. not delivered to the Secretary within 30 days of the date contained in the Notice of Refusal), the Secretary will not accept the appeal without the permission of the Licensing Tribunal. The Applicant will have an option to bring a motion to the Licensing Tribunal to extend the time for filing the appeal.

### **NOTICE OF HEARING**

1. Upon receipt of a Notice of Appeal from an Applicant or a recommendation to suspend or revoke from the Issuer of Licences, the Secretary will send a Hearing Notice to the Applicant/Licensee by registered mail at least 21 days prior to the hearing.
2. The Hearing Notice includes the date, time and location of the hearing, and advises the Applicant/Licensee that the matter may be heard and decided by the Hamilton Licensing Tribunal in their absence if they do not attend the hearing.

**DISCLOSURE**

1. The Representative of the City of Hamilton<sup>3</sup>, who attends the hearing on behalf of the Issuer of Licences, will send a disclosure package to the Applicant/Licensee, which may include the following:
  - A copy of the Application for a business licence.
  - A copy of the business licence issued.
  - Notice of Refusal.
  - Letter recommending the suspension or revocation of a business licence.
  - A copy of the signed courtesy letter sent to the Applicant / Licensee (if applicable).
  - A copy of inspection / witness notes.
  - A copy of relevant photographs or other documents.
  - A list of any additional material that may be used at the hearing.
  - A request for disclosure from the Applicant / Licensee including a deadline date.
2. If the Applicant/Licensee has any material, such as documents or photographs, that he/she wishes to use during the hearing, the Applicant/Licensee should disclose the information/document(s) to the Representative of the City of Hamilton in advance of the hearing, as requested in the disclosure package.
3. If either the Representative of the City of Hamilton or the Applicant/Licensee brings forward material during the hearing that has not been disclosed to the other party in advance, the Chair of the Tribunal will recess the hearing to allow the other party to review the material. When the hearing resumes, the other party will be given the opportunity to state any objections to the use of the material during the hearing. The Tribunal will decide, based on the submissions of the parties, whether or not the material may be referred to or introduced into evidence.

**TRIBUNAL AGENDA**

An Agenda is available to the public at the hearing or on the City's website, [www.hamilton.ca](http://www.hamilton.ca), or at the Office of the City Clerk, 71 Main Street West, 1st Floor, City Hall, 3 business days in advance of the hearing.

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<sup>3</sup> Either the Issuer of Licences or his/her designate may deal with an appeal.

**LEGAL COUNSEL**

The Applicant/Licensee may choose to be represented by a lawyer or an agent (who, in accordance with the Law Society Act and its regulations may provide representation), or may be self-represented.

**THE HEARING**

1. All Applicant/Licensee and/or their representatives must sign in.
2. The Chair will call the meeting to order and ask Tribunal members to declare any conflicts of interest.
3. The Tribunal Secretary will advise of any changes to the Agenda. The Tribunal will approve the Agenda.
4. The Chair will ask the City of Hamilton Representative, who sits at one of two tables facing the Tribunal, whether there are any requests for adjournment or matters that are proceeding on consent of both parties. The Tribunal will deal with these matters first.
5. The Chair will state the name of the Applicant/Licensee for which a hearing is being heard and the Applicant/Licensee will take a seat at the unoccupied table facing the Tribunal.
6. Hearings of the Tribunal are open to the public and documents which are submitted to the Tribunal will form part of the public record. If you will be providing any information about intimate personal or financial matters, advise the Tribunal at the start of the hearing. The Tribunal will decide, having regard to both the interests of any person affected and the principle that hearings be open to the public, whether or not the hearing will be open or closed to the public.
7. The City of Hamilton Representative will present its case first. The City of Hamilton Representative may make an opening submission.
8. The City of Hamilton Representative will call his/her witnesses. Once called, a witness is seated at the witness table and is affirmed.
9. At the conclusion of the testimony of each of the City of Hamilton Representative's witnesses, the Applicant/Licensee and then the Tribunal may ask their own questions of the witness(es).
10. After the City of Hamilton Representative has called all of his/her witnesses, the Applicant/Licensee will call their witnesses who may be the Applicant/Licensee themselves and/or other witnesses. Again, once called, a witness is seated at the witness table and affirmed.

11. At the conclusion of the testimony of each of the Applicant/Licensee's witnesses, the City of Hamilton Representative and then the Tribunal may ask their own questions of the witnesses.
12. The Applicant/Licensee and then the City of Hamilton Representative will make final submissions. The final submissions should include what each party is requesting of the Tribunal with respect to issuance, suspension, revocation or conditions imposed on the business licence.
13. The Hamilton Licensing Tribunal may retire to deliberate in the absence of the public, the City of Hamilton Representative and the Applicant/Licensee. The Secretary will retire with the Tribunal to record its decision.

### **THE DECISION**

1. The Tribunal renders its decision on the matter in the presence of the public, the City of Hamilton Representative and the Applicant/Licensee. If the Tribunal determines that additional information is required to render a decision, it may adjourn the matter to a future meeting date.
2. In its decision, the Hamilton Licensing Tribunal may uphold or dismiss the decision to refuse to issue a business licence, and/or revoke, suspend or have conditions imposed on the business licence.
3. A copy of the decision and the written reasons for the decision of the Hamilton Licensing Tribunal will be sent to the Applicant/Licensee by Registered Mail.