

Staff Report for Decision

DATE OF MEETING July 12, 2021

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SUBJECT PROPOSED AMENDMENTS TO THE BUSINESS LICENCE BYLAW

OVERVIEW

Purpose of Report

To provide Governance and Priorities Committee with information pertaining to the proposed amendments to the Business Licence Bylaw, the Fees and Charges Bylaw and the Bylaw Notice Enforcement Bylaw and to seek direction regarding next steps.

Recommendation

That the Governance and Priorities Committee recommend that Council direct Staff to proceed with finalizing the “Business Licence Bylaw 2021 No. 7318”, and that once finalized, return to a future Regular Council meeting for first, second and third readings of the “Business Licence Bylaw 2021 No. 7318”, along with amendments to the “Fees and Charges Bylaw 2007 No. 7041” and the “Bylaw Notice Enforcement Bylaw 2012 No. 7159”.

BACKGROUND

The *Community Charter*, Section 8 (6) provides municipalities with the authority, by bylaw, to regulate business. In addition to determining what defines business, a business licence bylaw also provides for:

- collection of fees
- terms of licences
- approvals, rejections, suspensions, or cancellations of licences
- violations and penalties; and
- regulations or requirements for specific and/or specialized business types.

The current “Business Licence Bylaw 1998 No. 5351” (the “Bylaw”), was adopted on 1998-NOV-02 and took effect 1999-JAN-01. Although amendments have been incorporated into the Bylaw over the years to accommodate changes, the Bylaw is in need of an update to accurately reflect current business trends and business operating requirements. As well, provide a bylaw that’s more concise and easier to read. This also provides an opportunity to incorporate and adhere to current City of Nanaimo bylaw formatting standards, including the practice of keeping all bylaw fees in the “Fees and Charges Bylaw 2007 No. 7041” (the “Fees and Charges Bylaw”) and all fines in the “Bylaw Notice Enforcement Bylaw 2012 No. 7159” (the “Bylaw Notice Enforcement Bylaw”).

DISCUSSION

In preparing to update the Bylaw, a review of business licence bylaws from municipalities of comparable size to Nanaimo was undertaken that included the cities of Kamloops, Kelowna, Prince George, Victoria, and the District of Saanich.

Based on the best practice research and suggestions received over several years, the following proposed changes to the Bylaw include:

- Definition updates
- Bylaw updates, including language, regulatory, and legal requirements
- Regulations for specific businesses – as a new schedule
- Fee schedule – removed (to be incorporated into the Fees and Charges Bylaw)
- Fine schedule – removed (to be incorporated into the Bylaw Notice Enforcement Bylaw)
- Updated maps

Definitions

Staff recommend the Definitions section be amended to clearly define the use of language within the Bylaw and to re-word definitions that were previously confusing or subject to misinterpretation. As such, the following definitions have been either updated or added:

"Business"	means carrying on a commercial or industrial undertaking of any kind or providing professional, personal or other services for the purpose of gain or profit, but does not include an activity carried on by the government, its agencies or government-owned corporations.	Updated to exclude business carried on by the government.
"City Licence"	means a business licence issued by the Licence Inspector for operating a business in or from a premises within the City.	Added to better differentiate from an Inter-Community and a Non-resident licence.
"Commercial Landlord"	means a person who owns or operates any premises within City boundaries and leases, lets or rents such premises to any other person or entity for the purpose of operating a business.	Added as a result of new requirement for licence under Section 3.2.1.
"Council"	means the municipal Council of the City.	Added to expand on references to Council within the bylaw.
"Escort Service"	means a business which provides persons as escorts for social, business, cultural or recreational occasions, but does not mean a person providing assistance to another person because of that person's age or disability.	Updated to exclude social assistance escorts.

"Inter-Community Business Licence"	means a business licence issued for the purpose of conducting business in a municipality that participates in the inter-community business licence program as described in the Inter-Community Business Licence Bylaw 2013 No. 7176.	Added as a result of new reference in Section 3.1.
"Liquor-Primary Establishment"	means a business licensed under the <i>Liquor Control and Licensing Act</i> of British Columbia where the service of liquor is the primary focus of the business.	Added to replace reference to Liquor-Licensed (Schedule A, Section 11).
"Mobile Business"	means a business that performs or provides a service or activity by moving from client to client within the City, but does not include operating in another municipality.	Added to differentiate between mobile and inter-community.
"Non-Profit"	means an organization registered as a legal entity under Provincial or Federal legislation whose constitutional purposes do not include gain or profit.	Added as a result of new requirement for non-profits to obtain a business licence (Section 3.1).
"Non-Resident Business"	means a business, other than a business carried on, in or from premises within the City, that is carried on in the City or with respect to which any work or service is performed in the City.	Added to differentiate between a resident business and a non-resident business.
"Special Event"	means an event such as a concert, performance, festival, exhibition, trade show or similar business activity operating for 5 or fewer consecutive days.	Updated to include activities.

The following definitions are either outdated or redundant and have been removed from "Business Licence Bylaw 2021 No. 7318" (the "New Bylaw"):

"Carrying on Business"	means selling, bartering or advertising for sale, any product or service for profit or gain.	Replaced by updated definition for Business.
"Licencee"	means a business entity which holds a licence to operate a business within the City of Nanaimo under this bylaw.	Standard definition that does not require an explanation.
"Liquor Licenced Establishment"	means a Liquor business licenced under the <i>Liquor Control and Licensing Act</i> of British Columbia".	Not required if Fetal Alcohol Spectrum Disorder regulation is removed from bylaw.

"Pub"	means a business primarily engaged in the sale of alcoholic beverages to the public.	Standard definition that does not require an explanation.
"Rave"	includes dance, entertainment, performance or other event, commencing or continuing after 2:00 A.M.; or an event the duration of which is in excess of six hours, where 30 or more persons assemble at any time and that is undertaken without obtaining a Liquor Licence issued under the <i>Liquor Control and Licensing Act</i> ".	Included in the definition of Special Event.
"Temporary Business"	means a business that does not operate for more than 30 days in a calendar year.	Being deleted at this time as a temporary licence fee is \$165 which is the same fee as the general business licence fee.
"Trade Show"	means an event carried on to promote and sell products from a fixed premises, the activity of which is intended to promote further sales; and which does not operate for more than five (5) consecutive days at a time.	Included in the definition of Special Event.
"Video Store"	means a business primarily engaged in the rental of videos to the public.	Redundant business.

Bylaw Updates

For the most part, the content of the Bylaw remains the same; however, it has been reorganized for better readability and cohesiveness. In addition, the following sections have either been updated or added to provide more clarity, or to introduce the requirement to obtain a licence.

Inclusion of Non-Profit Sector

Section 3.1 has been added to include non-profit organizations. To date, non-profit organizations do not require a licence; however, if amendments are being considered, it is an opportune time to include non-profits in the licensing process. In doing so, the City has the ability to accumulate and utilize the data provided with regard to number of people employed and which sector of the community is being serviced, such as health, education, social, housing, sports and recreation, to name a few.

In addition to the valuable statistical information provided, it also provides an opportunity to ensure non-profit businesses are complying with land-use and occupancy requirements and that the space in which they conduct business is to the standards of the building and fire codes. Currently, inspections of premises occupied by non-profits are not being completed.

The newly-created section reads as follows:

- 3.1 *A person, including without limitation a Non-Profit, must not carry on any Business in the City without first obtaining either a City Licence or a business licence issued by another Vancouver Island municipality to which the Inter-community Business Licence has been added.*

Commercial Leased Property

Section 3.2.1 has been added in order to provide a consistent approach to licensing commercial lease properties. Historically, commercial lease properties were treated as one business regardless of how many properties an individual owned and despite the Bylaw stating that a separate business licence was required for each location. Recent practice has been to require a separate business licence for each commercial lease property.

A commercial lease property includes a building containing commercial rental units as well as residential rental units (apartment buildings).

As such, Section 3.2.1 has been added to Section 3.2 which is already existing in the current Bylaw.

- 3.2 *A separate City Licence is required for each location where a business operates within the City.*

- 3.2.1 *For certainty, a Commercial Landlord must obtain a City Licence for each building identified by a separate civic address.*

Business Licence Application

Section 4.3 has been added to clearly outline the information required to be disclosed when making application for a business licence. Of particular importance is the requirement to provide documents supporting government approval, if required (f), which will relieve Staff from having to research operational requirements or even potentially missing other regulatory requirements when reviewing an application.

- 4.3 *Every application for a business licence must include the following information:*

- (a) the full name and contact information of the applicant;*
- (b) the type and description of the business, and related activities;*
- (c) the relationship of the applicant to the business;*
- (d) the trade or operating name of the business;*
- (e) if incorporated, the corporate name, address of its registered and records office, business telephone number and name of a corporate officer or manager who may be contacted;*
- (f) any Provincial or Federal enactments that apply to the business, and whether applicable approvals under those enactments have been obtained;*
- (g) proposed date of commencement and times of operation;*

Prorating of Fees

Section 5.2 (h) has been added to ensure businesses that have closed and re-opened are not eligible for the pro-rated business licence fee. This is more relevant to home-based businesses that close for periods of time, normally for reasons of a personal or economic nature.

5.2 Business licence fees for new businesses starting after the first, second, and third quarter periods of a business licensing period shall be pro-rated accordingly, except

- (a) businesses that have closed and re-opened under the same business name and ownership are not eligible for prorated fees, regardless of how long the business was not operating.*

Business Licence Renewals

Section 9 has been added to provide information on the requirement to renew the business licence and also to provide the ability to terminate a licence in the event that the licence is not renewed. Currently, there is no provision in the Bylaw to be able to close a licence despite repeated attempts to obtain outstanding fees or to locate a moved business. Currently, the practice is to keep an account open for two years, and then only when all attempts to contact the business owner have failed, will the outstanding fees be reversed and the account closed. This practice leads to inaccurate data and stats regarding the number of open accounts and licensing fee receivables.

- 9.1 Each business operator whose business activity is intended to or does continue in the year following issuance of their business licence must ensure that their business licence is renewed annually by December 31st, whether notice is given by the City or not, and the business operator must pay the annual renewal fee as set out in the City's Fees and Charges Bylaw.*
- 9.2 If a licence is not renewed as required by this Bylaw, the licence shall be terminated and the licensee who wishes to continue to carry on the business shall submit an application form and supporting documentation in the same manner as an application for an initial licence.*
- 9.3 Business licence applications received as a result of the licence being terminated shall not be eligible for the prorated rate as laid out in Section 5.2 and shall pay any outstanding fees before the licence is reinstated.*

Regulations

In the proposed New Bylaw, regulations for specific businesses are included as a separate schedule instead of listing them within the body of the bylaw, as is the case in the current Bylaw. The benefit of separating the regulations will provide for an easier-to-read, concise, and streamlined bylaw and will allow any future updates regarding additions, deletions, or changes to regulations to be done more easily and without affecting the body of the bylaw.

In addition to providing a separate schedule listing all specific business regulations, the following regulations have been added:

- **Adult Store**

- (a) No person carrying on the business of an adult entertainment store shall permit any person to be on the premises at any time unless such a person is 19 years of age or older.
- (b) No person carrying on the business of an adult entertainment store shall exhibit or permit to be exhibited any graphic sexual material or sex paraphernalia that is visible from the outside of the premises.

Rationale: It was discovered when licensing a new adult store that there were no regulations in place with respect to restricting admittance of minors or displayed material in windows. Establishing a regulation provides a means of adding a condition to the licence and ensuring compliance.

- **Assisted Living Residence**

In accordance with the *Community Care and Assisted Living Act*, any person(s) operating an assisted living residence for three or more unrelated adults must first obtain approval and be licensed to operate through the Ministry of Health (British Columbia).

Rationale: In working with Community Care, it was discovered that assisted living residences where more than two unrelated adults are being supported requires a licence from the Ministry of Health. Working in collaboration with Community Care ensures that the businesses licensed to provide support have been pre-approved by the Ministry to operate.

- **Cannabis – Cultivation, Processing, Testing, Research**

- (a) Every Business Entity that carries on business pertaining to cannabis cultivation, processing, analytical testing, or research must provide proof that the operation is approved by Health Canada before a business licence can be issued.
- (b) Every Business Entity that carries on business pertaining to cannabis research and if said business relocates after a business licence has been issued, must provide proof that Health Canada has approved the new business location.
- (c) Every Business Entity that carries on business pertaining to cannabis research and remains operating after five years must provide proof that Health Canada has renewed its research licence.

Rationale: In researching the Health Canada website and the requirements for cannabis cultivation, processing, testing and research, it was discovered that Federal Government approval is required before a business operates and that a new licence is required every five years. In establishing the requirement through the regulations section, it provides for a means to add it as a condition to the licence.

- **Commercial Landlord**

As a condition of continuing to hold a business licence in respect of carrying on business as a Commercial Landlord, no business licence holder or operator shall permit a commercial tenant or renter to carry on business on the same business premises without the tenant or renter holding a valid business licence.

Rationale: Added as a regulation to ensure that commercial property owners are aware that business licences are required for each business that operates in a commercial rental unit and that the business is legitimate and able to be licensed. Without a designated inspector, it is impossible for business licensing administrative staff to monitor and ensure that all commercial businesses are licensed.

- **Security Services**

As a condition of issuance of a business licence in respect of carrying on the business of watching, guarding, or patrolling for the protection of persons or property, or as a private detective, the Licence Inspector may require each person involved in the business to:

- (a) hold a licence as set out in the *Security Services Act*; and
- (b) provide confirmation of a satisfactory criminal record check.

Rationale: Security services and private investigators are regulated under the *Securities Act*. In establishing a regulation, it provides for a means to add it as a condition of the licence.

Removed from the Regulations section:

- **Raves**

Rationale: A business licence for a rave has not been issued in the past four years and is, in Staff's opinion, considered an event that no longer takes place within City limits and, therefore, the regulation is no longer required.

- **Fetal Alcohol Spectrum Disorder**

Rationale: The Fetal Alcohol Spectrum Disorder (FASD) regulation was adopted as an amendment to "Business Licence Bylaw 1998 No. 5351" by Council 2013-MAY-27 and came into affect 2014-JAN-01 (attached). As per the Bylaw, all liquor-licensed establishments were required to post signs advising of the harmful effects of consuming alcohol while pregnant.

Provisions for FASD awareness are important; however, in consultation with legal counsel, these provisions will require input from the Public Health Officer and must be deposited with the Ministry of Health. As such, they should be addressed through a separate Public Health bylaw, if Council wishes to proceed.

Business Licence Fees

In 1998, and shortly after the current Bylaw was adopted, Council directed Staff to undertake a thorough review of business licence fees in conjunction with business community representatives with the objective of establishing a clear, consistent, simplistic, and equitable fee structure. At that time, and as part of the Bylaw, fees associated with operating a business were tiered and based on the type and size of the business. The review established that the general consensus of the business community was that the fee structure was confusing, inconsistently applied, and not business-friendly.

After the conclusion of the review, a report was presented to Council that provided a comparison of possible fee structures; however, Staff recommended a selective flat fee that addressed concerns previously raised by the business community and eliminated tiered fees. The following excerpt from the report provides a better understanding of the review findings:

“The Selective Flat Fee option would result in a fee schedule which would be simple to administer, eliminate inconsistency in application of business licence fees, be readily understandable by the business community and enable Council to adjust fees in future for specific exceptions, in order to cover certain regulatory costs or community goals”.

The recommendation to amend the Bylaw to incorporate the selective flat fee schedule was ultimately approved by Council and continues to be utilized today.

It is Staff's opinion that the current fee structure is preferred to that of other municipalities that do not use a flat fee for business licensing. It is, therefore, recommended that the current selective flat fee structure as it pertains to the general licence fee of \$165 is retained as it remains consistently easy to manage and requires less Staff time in regard to administration and explaining to business owners how to calculate fees.

Business licence fees are as follows:

- Casinos/Escort Services/Massage Parlours - \$3,000
- Nightclubs/Pubs/Banks/Credit Unions - \$1,100
- Mobile Food Vending - \$165 - \$365
- General - \$165
- Childcare - \$50

Earlier this year, Council directed Staff to reduce the liquor-primary business licence fee of \$1,100 to \$165. Should Council choose to adjust the liquor-primary fee permanently so that it is the same as what food-primary establishments pay, changes to the fee schedule can be completed at the time that it is incorporated into the Fees and Charges Bylaw.

2019 Business Licence Stats

Total Home-Based licences	348
Total Non-Resident licences	198
<i>Total Inter-Community licences</i>	<i>102</i>
Total Other	330
Total licences issued	876
Revenue	\$124,659

2020 Business Licence Stats

Following are the stats for the 2020 year illustrating that 50% of all applications received are for home-based businesses and only a small percentage are commercial, which would include those businesses listed above with the exception of mobile food vending and home-based childcare.

Total Home-Based licences	423
Total Non-Resident licences	202
<i>Total Inter-Community licences</i>	<i>145</i>
Total Other	197
Total licences issued	822
Revenue	\$109,873

January 1 to June 29, 2021 Stats

The following table illustrates the number of licences approved to June 29, 2021. As illustrated, the trend continues to indicate that home-based businesses provide the majority of revenue received from licence fees.

Total Home-Based licences	290
Total Non-Resident licences	115
<i>Total Inter-Community licences</i>	<i>103</i>
Total Other	127
Total licences issued	532
Revenue	\$68,185

Total Open Business Licence Accounts

Total Home-Based licences	2,685
Total Non-Resident licences	1,092
<i>Total Inter-Community licences</i>	<i>845</i>
Total Other	2,993
Total open accounts	6,770

Fines

Although there are established fines associated with contravening the Bylaw, it is Staff's current practice to encourage business owners who are in contravention of the Bylaw to come into compliance. In most cases, business owners are unaware that a business licence is required and once told, will comply. Only when it is evident that business owners do not intend to comply, will

a fine ticket be issued. As an example, a fine has not been issued yet for this year. Therefore, it is Staff's opinion the fines do not need to be amended at this time and recommend to Council the fine schedule remain unchanged.

For reference, the fine schedule is as follows:

Operating without a business licence	\$100
Operating in contravention of a business licence condition	\$100
Failure to supply sub trade list	\$50
Failure to notify of a change in business	\$50
Failure to change business address	\$50
Failure to post FASD signage	\$100
Disobey suspension order	\$200

As it is desired to keep all City bylaw fees in the Fees and Charges Bylaw, all fees related to licensing businesses as outlined in Schedule A, Business Licence Fees (attached), of the current Bylaw will not be included in the proposed New Bylaw. If approved, an amendment to the Fees and Charges Bylaw will be forwarded with the New Bylaw for first, second, and third readings at a future Council meeting.

Similarly, in maintaining the current practice of housing all City bylaw fines within one bylaw, the fine schedule contained within the current Bylaw will not be included in the proposed New Bylaw and instead will be added to the "Bylaw Notice Enforcement Bylaw 1984 No. 7159", if directed by Council. Again, an amendment will be brought forward for first, second, and third readings when the proposed New Bylaw returns to Council at a future Regular Council meeting.

As such, the draft "Business Licence Bylaw 2021 No. 7318", excluding the fee and fine schedules, is being presented at this time. In doing so, a more thorough review of business licensing fees and fines can be undertaken at a future date, if required, without affecting the Business Licence Bylaw.

OPTIONS

1. That the Governance and Priorities Committee recommend that Council direct Staff to proceed with finalizing the "Business Licence Bylaw 2021 No. 7318", and that once finalized, return to a future Regular Council meeting for first, second, and third readings of the "Business Licence Bylaw 2021 No. 7318", along with amendments to the "Fees and Charges Bylaw 2007 No. 7041" and the "Bylaw Notice Enforcement Bylaw 2012 No. 7159".
 - Advantages: A review of best practices has been completed and the resulting changes to the Bylaw reflect current business trends. In allowing Staff to continue this course of action, the updated New Bylaw will be concise and provide a better regulatory framework, especially for the newly introduced regulations pertaining to specific business as outlined in Schedule A. In addition, the updated New Bylaw will provide Staff with the authority to close delinquent accounts, which will ultimately reflect in more up-to-date stats.
 - Disadvantages: It is Staff's opinion that there are no disadvantages to pursuing a Bylaw update.

- Financial Implications: Thus far, the only financial cost has been the consultation with legal counsel. If anything, adopting the proposed amendments will increase licensing revenue for the additional licences required by commercial property owners and non-profits if a fee is established.
2. That Council direct Staff to review the fees and fines associated with licensing businesses and return to a future Governance and Priorities Committee meeting with the results of the review.
- Advantages: Should this option be considered, it remains Staff's opinion that the New Bylaw be adopted before a review of fees and/or fines is undertaken. If the fees and fines are relocated to the Fees and Charges Bylaw and the Bylaw Notice Enforcement Bylaw, as noted above, then the results of a separate review can be reviewed by Council at a later date.
 - Disadvantages: It is Staff's opinion that there are no disadvantages to undertaking a review of fees and fines.
 - Financial Implications: None.
3. That Council provide an alternative direction. |

SUMMARY POINTS

- The existing Bylaw was adopted in 1998.
- An updated bylaw is proposed in order to reflect current business trends and requirements.
- Updates include the inclusion of non-profit organizations.
- The report includes clarification with regard to commercial lease properties, application requirements, proration of fees, renewals, and regulations.
- Staff recommend that fees associated with the Bylaw be removed from the bylaw and introduced into the Fees and Charges Bylaw without any changes at this time.
- Staff recommend that fines associated with contravening the Bylaw will be removed from the bylaw and introduced into the Bylaw Notice Enforcement Bylaw.
- Fees and fines, once introduced into the respective bylaws, be reviewed at a later date.

ATTACHMENTS:

ATTACHMENT A: "Business Licence Bylaw 1998 No. 5351" Schedule A,
Business Licence Fees

ATTACHMENT B: "Business Licence Amendment Bylaw 2013 No. 5351.1" -
Fetal Alcohol Spectrum Disorder Amendment

Draft "Business Licence Bylaw 2021 No. 7318"

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