

Type of Decision									
Meeting Date	Friday, June 19, 2009				Report Date	Monday, June 15, 2009			
Decision Required	X	Yes		No	Priority	X	High		Low
Direction Only		Information Only			Type of Meeting	X	Open		Closed
REPORT TITLE									
Municipal Hall Rental Agreement, Smart Serve and Security 19/06/09/003									

Subject: Options available to the Municipality to ensure that lessee's of municipal facilities comply with legislation, especially where Special Occasion Permits and liquor licensing is concerned.

Recommendation: That the attached Hall Rental Agreement be utilized immediately. That Council consider hosting and offering to the public (at a reduced rate) a Smart Serve training program. That Council consider hiring and training an individual to perform the duties of "facility manager" during hall rental.

WHEREAS recent information sessions have provided solid direction to organizations leasing facilities, where Special Occasion Permits (SOPs) are used;

AND WHEREAS recent legislation and regulations have increased the responsibilities of SOP holders and property owners alike;

AND WHEREAS the staff and Council of the United Townships of Head, Clara & Maria deem it prudent to provide evidence of due diligence;

BE IT RESOLVED THAT the Council of the United Townships of Head, Clara & Maria do hereby approve of the utilization of the updated Hall Rental Agreement dated June 2009;

AND BE IT FURTHER RESOLVED THAT Council consider hosting a Smart Serve training program to be offered to regular users of the Municipal Hall at a reduced rate;

AND BE IT FURTHER RESOLVED THAT Council consider hiring a Facility Manager for attendance at all licensed events on Municipal property to ensure that appropriate steps are being taken to protect the public and the Municipal property.

Background/Executive Summary: The attached notes from the meeting held on June 11, 2009 and the changes to the Hall Rental Agreement are the long form. Basically, the *Liquor Licence Act, 1990*, the *Private Security and Investigative Services Act, 2005* and the *Occupier's Liability Act, 1990* all impose restrictions, duties and responsibilities on licensed establishments, property owners and holders of Special Occasion Permits (SOP). In order to protect itself from potential liability, the municipality needs to make sure that it has completed its due diligence in informing users of the municipal hall of their responsibilities, hence the updated rental agreement.

It is recommended that we go one step further and consider hiring an individual to be Smart Serve trained to oversee the facility when it is being rented. Even though the municipality is not the holder of the SOP, it may still be liable for charges should the permit holder allow infractions to occur. Depending on the severity of the charge, the municipality may be held responsible, especially when the permit holder does not have adequate insurance or assets. Having an attendant on site will assist in protecting our assets. The attendant will ensure that the building is locked, will assist with maintenance, supply and washroom issues, will advise permit holder of problem areas. It would not be our responsibility to cut anyone off, to evict anyone or to perform the duties that are those of the permit holders. The person would simply advise the permit holder and keep a log of all incidents.

Finally, as a way of showing that we are completing our due diligence, I recommend hosting a Smart Serve training in the municipal hall at reduced rate to attendees allowing us to train our staff (those interested) as well as volunteers from the community who routinely end up “bartending”.

The issue of security will remain the responsibility of the hall user. They can train their own “security” or hire individuals from licensed agencies. Our facility person would be able to report any non-compliance by the permit holder to the OPP and Council.

Financial Considerations/Budget Impact:

Attendant for SOP licensed functions - @ \$11.68/hour (lowest on grid) x 5 events x 10 hours per event (plus employment costs) = \$671.60/year

Smart Serve training – training package \$150.61

Plus \$21.11 per certification kit. Estimate 15 interested individuals = \$316.65

Total Costs \$467.26 (gross) – fee of \$12.50 per registrant = \$279.76 (net) Cost to Municipality

Total costs for 2009 – \$951.39 (wages and training) Funding is available in “recreation” budget.

Total costs for each subsequent year – wage costs – estimate \$675

Policy Impact: Not in conflict with any policy. Solidifies our response to obligations under the *Occupier’s Liability Act*.

Resources/Others Consulted: Mark Lambert, Liquor and Gaming Inspector; Sgt. Lisa Taylor, OPP; Mark Reinent, Facility Manager, Town of Petawawa.

Approved and Recommended by the Clerk

Melinda Reith,
Municipal Clerk

Melinda Reith

Background Notes:

Notes from Liquor License Act and Private Security and Investigative Services Act Information Session held June 11, 2009

Private Security and Investigative Services Act – Sgt. Lisa Taylor

- Everyone working in security must be licensed.
- License is valid for one year and costs \$80 per year.
- This applies to security guards or Private investigators. Security guards include bouncers. Security is required by law under a Special Occasion Permit.
- If two licenses are required, two fees apply. Can hold dual licenses.
- Licensed businesses are separate.
- Security guards, patrols, protectors etc. require uniforms to provincial standards. Must have “SECURITY” in block letters on back and front of shirts. Uniforms must not resemble police officer uniforms. A guard doing “loss prevention” work is exempted from the uniform rules. The term “officer” is prohibited.
- True volunteers do not have to be licensed however; if free entrance to an event is included, it is considered compensation and those individuals require a license. Volunteers for the Lion’s Club who are working a Club event would not need to be licensed so long as they are not participating in activities either before or after their shift. If they are working a party for a function held by someone other than the Lion’s Club, they are true volunteers and do not need a licence.

- If the business contracts its security services from a recognized security service provider the business does not need to be registered. Otherwise it does. If you have non-contracted security, the business must be registered. As a municipality that rents our premises, we do not need to be licensed. We do not have a Liquor Licence.
- The business is responsible to ensure that anyone hired is licensed. **Corporations could face a fine of up to \$250,000 for hiring unlicensed security. Although we are not required to be licensed under the *Occupiers Liability Act, 1990*, we can still be held liable. This includes the corporation, its officers and directors. That means management and council.**
- The license is assigned to the individual who owns that license. It does not belong to the business or organization. A licensed individual cannot act as an agency and solicit business from establishments. All licensed individuals must show their license if asked by an inspector, police officer or a member of the public.
- There will eventually be complete training and testing, currently there is not.
- Q & A on website – www.ontario.ca/private-security or PSIS.PrivateSecurity@ontario.ca.
- Does a municipality need to be registered or hire licensed individuals to be facility managers under lease agreements with SOPs? – NO. We are not licensed so we do not need to be registered. The SOP states that the license holder is responsible for security. They need to hire qualified individuals. However, it would be prudent for facility managers to be SMARTSERVE trained.
- **If there is ever an incident at the municipal hall, the *Occupier's Liability Act* will likely find us guilty too, depending on the severity of the offence. The municipality should include in its lease agreement a rider stating the conditions and responsibilities of the lessee, and notice that failure to comply will result in their event being shut down.**
- If they do not comply, it is within our rights to close an event. Further, when asked, the lessee needs to prove that they have met all applicable conditions of the lease agreement, laws and regulations. One of the policy clauses must state, "The lessee must comply with all laws and regulations." It is prudent to go one step further and list them, to include an indemnification clause, and to demand private insurance.
- We are liable for activities on our property. **We should have a municipal rep on site during all events ensuring that the lessee complies with all known laws.**

AGCO – Mark Lambert, District Enforcement Inspector, Gaming and Liquor

- **LLA states that all directors, officers of the corporation, the corporation itself and the licensee can be charged depending on the infraction. Fine up to \$250,000.**
- Individuals include servers, bouncers, managers, licensee and bar owners. Fine up to \$100,000 or imprisonment up to 1 year or both.
- **For serving a minor – corporation fine up to \$500,000, individual up to \$200,000 or imprisonment up to 1 year or both.**
- A typical charge for serving intoxicated persons is \$1,500 to \$2,000 for the individual for the first offence.
- Under an SOP, staff are liable for all infractions.
- Inspector may ask for up to 6 months of receipts to ensure that licensee is complying with their licence, only buying and selling under the licence.
- The licence holder is responsible for all damage to the area around the licensed area. If people are standing in line to get it, are waiting around for a cab or ride after closing, are outside smoking, you are responsible. You have to have security for both inside and outside the licensed venue.
- If you evict someone for drunkenness, cut them off and ask them to leave, you are responsible for them until they are sober.
- The licence holder is responsible for anything that happens within the establishment. It is considered "maintaining control". Failure to do so is in contravention to the LLA.

- The inspectors work on “Risk Based Enforcement”. The 5 Big contraventions are serving minors, intoxication (and allowing them to stay in venue), overcrowding, disorderly behaviour and serving or allowing consumption outside hours.
- When determining occupancy must include staff, band members, security etc.
- Sale or service – you or others – cannot have beverages being consumed after 2:45 a.m. In fact, all signs of service must be removed from the premises – ice, mixed drinks, beer bottles, glasses etc. Service stops at 2:00; only serve one or two drinks at last call; serving more can be considered encouraging consumption; cannot put a beer on ice for staff for after cleanup. Must be put away. No staff parties after a hard night.
- The law states “have or consume” the permit holder is liable even if they did not serve the person, especially a minor. It is your duty to ensure that minors are not consuming, no matter how they get the alcohol. Even if the kid steals a beer from Dad, you are responsible and at risk.
- How much security do you need to make sure these things don’t happen? That’s up to you to decide. The act states “adequate security”. You get to define adequate.
- Regulation 719 s.45 states, “The licence holder shall not permit drunkenness, unlawful gambling or riotous, quarrelsome, violent or disorderly conduct to occur on the premises or in the adjacent washrooms, liquor and food preparation areas and storage areas under the exclusive control of the licence holder.” This means that you must ensure a proper staff/customer ratio to effectively monitor your event. An incident log should be used to record any infraction, who, what, where, when, how you handled it. Although drinking behind the bar is not illegal, it should be facility policy to prohibit it. To be intoxicated behind a bar is illegal.
- Under an SOP, you have to have security by law. You need to protect your liquor license and your opportunity to obtain another in the future. The size, location and nature of the event must be considered when determining “adequate” security. The licensee is ultimately responsible for all things that happen at the event and can be charged.
- Under an SOP, you cannot make a profit from the bar. Do not advertise stags and does etc. as a fundraiser however, all costs can be deducted from proceeds including rental fees, food, security, permits, liquor, mix, supplies, entertainment, catering fees etc.
- Make sure the parking area is monitored. If you see an impaired person with keys, call police or staff to try to dissuade the person from driving. Keep the keys, Call home. Drive them home. Don’t just put the person in a cab and say goodnight, he is still your responsibility.
- Must have Food available. If you have 200 people, you must have food for 200 people. Rules say you must have 3-5 types of foods excluding chips, peanuts, etc. Sandwiches, subs, burgers etc. are adequate. If a catered dinner, keep leftovers or be prepared to provide food.
- Must ensure that lessees are aware of our Municipal Policy. Post it, have them sign that they have read it. Prepare signs, put them up. We can’t do this... because....
- There is no such thing as a “private” party. It does not exist in a licensed venue. A license is a license. It can and will be inspected. All occurrences must be legal. We are not a “licensed venue” but the hall is a public place. We do not have to worry about losing a license but could be charged for infractions.
- Under an SOP, you are responsible for the sale, service and consumption of alcoholic beverages. Have to post your receipts and permit at the bar.
- As a reception, you can have invited guests only. Each person in attendance must be on the guest list. Must have been specifically contacted and invited. Stag and does, weddings, birthday parties etc. cannot advertise in papers, flyers, on-line etc. Each attendee must have been specifically invited and have a ticket or written invitation. SOP receptions CANNOT BE ADVERTISED.
- Only qualified not for profit or registered charities can hold fundraisers.
- There is a legal requirement for a minimum charge of \$2.00 per drink. Should limit the number of tickets a person can buy at one time. Around midnight, should limit the number of drinks served to one per person. Sell one ticket at a time. Your permit may be revoked during an event by the police or the liquor inspector.
- It is illegal to raffle off liquor or give away liquor as a prize unless it is a qualified licensed lottery event.

- It is illegal to have alcohol in any location that is not specifically licensed including washrooms, parking lots, smoking areas etc. This too will come back on the licensee. They must maintain control and entry to the event at all times.
- Failure to post Sandy's law poster will result in a fine of \$1,500 - \$2,000.
- Licence holder is responsible to ensure that contests involving liquor do not occur.
- As a municipality, we do not need to be SMART served. We do not need to worry about stopping contests involving liquor etc. This is up to the licensee.
- Do not need seating for total number of occupants. It is allowable to have stand up bars. Must not exceed maximum capacity.