

Type of Decision									
Meeting Date	Friday, May 21, 2010				Report Date	Wednesday, May 19, 2010			
Decision Required	X	Yes		No	Priority	X	High		Low
Direction	X	Information Only			Type of Meeting	X	Open		Closed
REPORT TITLE									
Municipal Hall Rental Agreement & Volunteer Security 21/05/10/204									

Subject: Unfinished business December 2009. - Amendments to hall rental agreement concerning security and volunteers.

Recommendation: That hall rental Agreement be amended slightly, as follows. The clause requiring properly trained security should not be removed in its entirety as explained in the summary below.

**WHEREAS** the wording in the current Hall Rental Agreement implies that all security must be licensed and must wear uniforms whether or not they volunteer their services;

**AND WHEREAS** this is a concern to some volunteers in the community;

**THEREFORE BE IT RESOLVED THAT** the Council of the United Townships of Head, Clara & Maria does hereby agree to amend clause 18. d. of the HCM Hall Rental Agreement adopted June 2009 by adding the phrase 'excluding true volunteers' after the word "personnel" in the first sentence, by inserting the word 'applicable' between the words "all" and "security" in the second sentence, and by removing the sentence 'A license currently costs \$80.'

The new clause would read "***Under the Private Security and Investigative Services Act, 2005 all "bouncers" or "security" personnel, excluding 'true' volunteers, must be licensed. It is the responsibility of the SOP holder to ensure that all applicable security staff is licensed and wearing appropriate uniforms...***"

Background/Executive Summary: Further to discussion that occurred in December of 2009 concerning the Hall Rental Agreement/MAP and the need for security. Although this condition, and many others, is in the various Acts, the legislation is often difficult to read, interpret and understand. Putting the details in the agreement is proof that we have completed our due diligence in ensuring that everyone who rents our facility understands what they are agreeing to. We need to remember that this agreement is for anyone who may rent our facility not one specific group of volunteers.

As requested, expert advice was requested from Mark Lambert, Liquor License Inspector; Mr. Bill Instance, Municipal Lawyer; Mr. Bill Riley, MIS Insurance; Lisa Kool, PSIS Branch OPP; and S/Sgt. Joe Girard, OPP. I have attached each of their responses for your perusal and have highlighted the pertinent sections below.

The consensus is that the agreement should remain as is, including the request for security section. Some of the individuals addressed recommended that we go further and:

1. ensure that municipal staff is on site;
2. insist on licensed security for any event; and
3. separate this agreement from a formal Municipal Alcohol Policy.

Mark Lambert, Liquor License Inspector

- Security
  - It is up to the SOP holder to decide what “adequate” security is, however, we can ask for more than what is legislated.
  - We are asking for more than is legislated in regards to SMART serve. Not everyone needs to be but it is highly recommended. It should be in our house policy.
  - “If someone was using my house, I’d want to know what’s going on.” Was the response to ‘should we have someone on site during events?’
  - In respect to security, the number and the definition of compensation – “that is up to the courts and the SOP holder to determine”. Don’t define it in your policy.
- Liability
  - In the event of an incident, the municipality must be able to show what they have done to protect themselves. In a civil case, everything that you can show that attempts to educate the public, the lessee and protect the public would help you. *(Clerk’s Note: As Bill Riley expressed in our insurance and risk management session – the deep pocket syndrome will apply and the municipality will be named.)*
- FYI - In a separate AGCO session I just attended Mark’s comments included:
  - Volunteers don’t have to be licensed however; if they receive free admission, free pizza, free meal etc. then they must be licensed under the Act.
  - Under an SOP security does not have to be Smart served however; if they are not, how will they know what to look for, signs of intoxication, proper id etc. Also, should there be a problem and a liability claim, the lack of trained security will not bode well for those named/charged if it goes in front of a judge. *(Clerk’s note: Bill Riley – a large number of these issues are settled out of court.)*
  - Develop, post and enforce a house policy on intoxication. What are the signs, who determines these, what should be done?
  - MAP should include a ‘do not call last call’ provision.
  - Municipality should consider ‘No alcohol beyond this point’ signage.
  - Liquor inspectors are now offering training sessions to local SOP issuing staff to ensure they are only providing licenses as per legislation. This was not routinely done in the past.
  - Mark has advised that he reads all the local papers, watches for advertisements of SOP events that should not be taking place ‘e.g. Stag & Does open to the public, advertising fundraising and will visit them. He also has the authority to monitor gaming activities as well including tickets for ‘Texas Mickey’ or what have you. Any contest for alcohol is illegal. Any lottery without a proper license is illegal, including 50/50 draws.
  - Any SOP application that is questionable by local issuing offices is sent to Mark to request an inspector site visit.

Mr. Bill Instance, Municipal Lawyer

- Security
  - Short answer – Missing Link (or any volunteer organization) can provide security and they do not need to be certified.
  - There is currently no case law defining compensation.
  - “In my opinion this interpretation of remuneration is not very persuasive. I would even question Sgt. Taylor’s view of entry to the very event that the security is required could be considered remuneration. However, if the police department is of that view Missing Link would at least run the risk of being charged in those circumstances despite the fact that a Judge hearing the matter may have a different opinion.”
- Liability of the Municipality
  - If there is a breach of the municipalities’ duty of care regarding occupiers of the Municipal Hall it can be found liable for any damages. Very case specific. Duty of Care can be restricted, modified or excluded that is what we are doing with the Hall Rental Agreement.

- No available case law confirming whether or not a volunteer organization or the Municipal could be charged under the LLA. (*Clerk's Note – as explained at the Municipal Insurance Session with Bill Riley, often these cases are settled out of court for substantial sums – there would be no case law.*)
- “I do not believe members of Council or the staff of the Municipality can be personally charged with infractions.”
- Should the security clause be removed from the agreement?
  - “I believe it is reasonable to keep the security clause in the Agreement for a number of reasons.”

Mr. Bill Riley, MIS Insurance

- In response to the statement that Council must do everything it can to make fundraising by volunteer organizations as easy as possible and stop putting up roadblocks...
  - “Age old argument made by organizations that want municipalities to be the insurer of choice as opposed to them taking responsibility for their own actions thereby exposing the municipal insurance program and all the rate payers to their risk.”
- Will the Municipality be named?
  - “Yes a potential claimant injured as a result of alleged over serving of alcohol will also name the Municipality. That is common, the injured party and their solicitor is attempting to find someone with the ability to pay should they be successful.”  
(*Clerk's Note: Deep pocket syndrome and Joint and Several Liability.*)
- Should the security clause be removed from the agreement?
  - “Most if not all the Municipalities we deal with have an insurance and security requirement in their facility rental agreement. We also think that if you now amend your agreement with regards to security from its current form to a lesser level of security you might expose the Township to greater liability...”

Lisa Kool, Public Security and Investigative Services Branch, OPP

- Remuneration
  - “You are correct in asserting that individuals who perform work, for remuneration, that primarily consists of guarding or patrolling for the purpose of protecting persons or property are required to hold a security guard licence under the PSISA. If individuals are performing such security services and are not receiving any form of remuneration (e.g. free admission to an event), they do not require a security guard licence under the PSISA.”
  - “Based on the information you provided, the annual ‘Appreciation Dinner’ could be viewed as a form of remuneration in exchange for security services as defined under the PSISA.”

S/Sgt. Joe Girard, OPP

- “It is correct that events meeting the definition of a fundraising event for a volunteer organization need not hire professional/licensed security personnel. However, in my opinion they should still be used instead of untrained volunteers. This is not based on a liability perspective; but on my experience in law enforcement for the last 28 years and having policed a variety of licensed events.”

Resources/Others Consulted: S/Sgt. Joe Girard, OPP; Mark Lambert, Area Liquor License Inspector; Bill Riley, MIS Insurance; Bill Instance, Municipal Lawyer; Lisa Kool, OPP Private Security and Investigative Securities Branch; the Ontario Recreation Facilities Association; Ontario Parks and Open Space Alliance;

Approved and Recommended by the Clerk

Melinda Reith,  
Municipal Clerk

*Melinda Reith*