

Hours of Operation - Manual Coin-Operated Car Wash Establishments

(City Council on July 4, 5 and 6, 2000, adopted this Clause, without amendment.)

The Planning and Transportation Committee recommends that:

- (1) Schedule 24 of Licensing By-law 20-85 be amended so that the standard hours for manual coin-operated car wash establishments located within a 122-metre distance from residential properties be as follows:**

7:00 a.m. - 9:00 p.m. (Mondays to Sundays during the winter months)

7:00 a.m. - 11:00 p.m. (Mondays to Sundays during the summer months, beginning June until September);

- (2) manual coin-operated car wash establishments be permitted to apply for extended hours of operation;**
- (3) the report (May 18, 2000) from the Commissioner, Urban Development Services be adopted subject to:**

- (a) amending Recommendation (1) to read:**

“(1) the Criteria for approval of extended hours of operation for manual coin-operated car washing establishments be as follows:”

- (b) amending Criteria No. 1 by adding at the end thereof, the words:**

“and shall contain a 24-hour contact telephone number for immediate response by the site manager to any complaints by residents”;

- (c) amending Criteria No. 3 by adding at the end thereof, the words:**

“and such lights shall be shielded to shine away from residential properties”;

- (d) amending Criteria No. 4 by adding at the end thereof the words:**

“if so required by the Toronto Licensing Tribunal”; and

- (e) adding the following additional Criteria No. 6:**

“6. each car wash facility shall have displayed in a prominent place, on clear view to the public, the telephone number of Municipal Licensing and Standards and the business telephone number of the operator of the facility”

(f) amending Recommendation (2) by adding the words “and to consult with the appropriate Councillor(s);”

(g) adding the following additional Recommendation:

“(5) if an applicant has a history of complaints, the application shall be heard by the Toronto Licensing Tribunal;”

so that the report’s recommendations now read:

“(1) the Criteria for approval of extended hours of operation for manual coin-operated car washing establishments be as follows:

“1. Signs must be posted in compliance with the criteria to be established by the Executive Director of Municipal Licensing and Standards or his or her designate. Such signs shall prohibit the playing of music or any other sound which may be disturbing to local residents and shall contain a 24-hour contact telephone number for immediate response by the site manager to any complaints by residents;

2. signs described in Criteria 1 must be illuminated and made clearly visible only to persons on the site;

3. adequate artificial light must be provided on the site to maintain a minimum level of illumination of 10 lux (0.9 footcandles) measured at the floor or surface level and such lights shall be shielded to shine away from residential properties;

4. the site must be under constant supervision of an employee at all times if so required by the Toronto Licensing Tribunal;

5. the site must be maintained in compliance with all terms and conditions of any applicable site plan agreement; and

6. each car wash facility shall have displayed in a prominent place, on clear view to the public, the telephone number of Municipal Licensing and Standards and the business telephone number of the operator of the facility;

(2) the Executive Director of Municipal Licensing and Standards or his or her designate, be authorized to receive and consider applications for extended hours of operation for manual coin-operated car washing establishments and to consult with the appropriate Councillor(s);

- (3) **where there are reasonable grounds to believe that an applicant is unable to comply with the established criteria for granting extended hours, the Executive Director of Municipal Licensing and Standards or his or her designate be authorized to not grant the application;**
 - (4) **any request for a hearing on the decision not to grant approval for extended hours may be made to the Licensing Tribunal within 30 days of the decision; and**
 - (5) **if an applicant has a history of complaints, the application shall be heard by the Toronto Licensing Tribunal.”; and**
- (4) **appropriate City officials be authorized and directed to take all necessary action to give effect hereto.**

The Planning and Transportation Committee reports, for the information of Council, having requested the City Solicitor to report directly to Council for its meeting on July 4, 2000 on the following proposed amendment to the foregoing amended Recommendation (5) of the report (May 18, 2000) from the Commissioner of Urban Development Services respecting a hearing before the Toronto Licensing Tribunal for applicants who have a history of complaints:

“and that notification of this hearing be given in the same manner as that given by the Committee of Adjustment, or some alternative approach”.

The Planning and Transportation Committee submits the following transmittal letter (May 5, 2000) from the City Clerk, Licensing Sub-Committee:

Recommendations :

The Licensing Sub-Committee recommends that:

- (1) the recommendations contained in the report (February 17, 2000) from the City Clerk, Licensing Sub-Committee, be struck out;
- (2) Schedule 24 of Licensing By-law No. 20-85 be amended so that the standard hours for manual coin-operated car wash establishments located within a 122-metre distance from residential properties be as follows:
 - 7:00 a.m. – 9:00 p.m. (Mondays to Sundays during the winter months)
 - 7:00 a.m. – 11:00 p.m (Mondays to Sundays during the summer months beginning June until September);
- (3) manual coin-operated car wash establishments be permitted to apply for extended hours of operation;
- (4) the appropriate City Officials be authorized and directed to take all the necessary action to give effect thereto; and

- (5) the Commissioner of Urban Development Services report to the Planning and Transportation Committee on appropriate conditions with respect to extended hours of operation for manual coin-operated car wash establishments located within a 122-metre distance from residential properties.

Background:

At its meeting on May 4, 2000, the Licensing Sub-Committee had before it the following reports/communications:

- report (March 23, 2000) from the City Clerk, Planning and Transportation referring the recommendations quoted below contained in the report (February 17, 2000) from the City Clerk, Licensing Sub-Committee, and related material back to the Licensing Sub-Committee with a request that the matter be dealt with as expeditiously as possible;
 - (1) a program of targeting problem locations be adopted;
 - (2) the By-law not be amended at this time; and
 - (3) Schedule 24 of the Licensing By-law 20-85 be amended so that the hours of operation of coin-operated car washing facilities located within a 122-metre distance from a residential area be regulated as follows:
 - (a) 7:00 a.m. to 9:00 p.m., Mondays to Fridays;
 - (b) 9:00 a.m. to 6:00 p.m., Saturdays and Sundays; and
 - (c) 7:00 a.m. to 11:00 p.m., Mondays to Fridays (beginning of June until end of September).
- communication (March 31, 2000) from Kevin Gallagher, Vice President, TerraChoice Environmental Services Inc.
- communication (April 27, 2000) from Aric Levy, Owner, Sheppard Provost Car Wash Limited
- communication (April, 2000) from Domenic DiMonte, Manager, Crosstown Car Wash
- communication (April 27, 2000) from Donald Hux, Director, Canadian Car Wash Association
- communication (April 26, 2000) from David Armstrong, President, and David Woodcroft, Car Wash Operations Manager, Cango Inc.

The following persons addressed the Sub-Committee:

- (1) Don Hux, Canadian Car Wash Association
- (2) René Dupuis, Director, Real Estate and Network Development, Petro-Canada
- (3) Zizi Barsoum
- (4) Cy Armstrong and Dave Woodcroft, Cango Inc.
- (5) Vito Cosentino, Wash 'N Go
- (6) Emad Rozik, Petro-Canada
- (7) Julie Wallis, resident

- (8) John Carinci, Jet Hot Coin Car Wash
- (9) Kevin Mercer, Riverside Stewardship Alliance

(Communication dated March 23, 2000, from the
City Clerk, Planning and Transportation Committee,
addressed to the Licensing Sub-Committee)

Recommendation:

The Planning and Transportation Committee referred the report (February 17, 2000) from the City Clerk and related material back to the Licensing Sub-Committee with a request that it be dealt with as expeditiously as possible.

Background:

At its meeting on March 21, 2000, the Planning and Transportation Committee gave consideration to the report (February 17, 2000) from the City Clerk, Licensing Sub-Committee recommending the adoption of the report (January 11, 2000) from the Acting Commissioner of Urban Development Services, titled "Hours of Operation for Auto Body Shops and Car Washing Establishments" which recommends that:

- (1) a program of targeting problem locations be adopted, and
- (2) the By-law not be amended at this time" ; and
- (3) that Schedule 24 of the Licensing By-law 20-85 be amended so that the hours of operation of coin-operated car washing facilities located within a 122-metre distance from a residential area be regulated as follows:
 - (a) 7:00 a.m. to 9:00 p.m., Mondays to Fridays;
 - (b) 9:00 a.m. to 6:00 p.m., Saturdays and Sundays; and
 - (c) 7:00 a.m. to 11:00 p.m., Mondays to Fridays (beginning of June until end of September).

The Committee also had before it the following communications:

- (March 13, 2000) from David J. Armstrong, President, Cango Inc., requesting that the report be deferred for one month to enable Cango Inc. to conduct a full review of the issues, and advising that the proposed amendment to By-law 20-85 would have a severe impact on business operations.
- (March 13, 2000) from Bradley Goetz, Canadian Carwash Association supporting the recommendations that the existing By-law not be amended and a system be developed to deal with problem locations and advising that they are willing to deal with the City to resolving problems.
- (March 21, 2000) from Councillor Miller endorsing the request of the Ripley Area Residents Group Ltd. as set out in their letter of March 20, 2000.

(Communication dated February 17, 2000 from the City Clerk, Licensing Sub-Committee, addressed to the Planning and Transportation Committee)

Recommendations :

The Licensing Sub-Committee recommends:

- (1) that the report (January 11, 2000) from the Acting Commissioner of Urban Development Services, titled "Hours of Operation for Auto Body Shops and Car Washing Establishments", be adopted; and
- (2) Schedule 24 of Licensing By-law 20-85 be amended so that the hours of operation of coin-operated car washing facilities located within a 122-metre distance from a residential area be regulated as follows:
 - (a) 7:00 a.m. to 9:00 p.m., Mondays to Fridays;
 - (b) 9:00 a.m. to 6:00 p.m., Saturdays and Sundays; and
 - (c) 7:00 a.m. to 11:00 p.m., Mondays to Fridays (beginning of June until end of September).

The Sub-Committee reports having received the report (February 1, 2000) from the Acting Commissioner of Urban Development Services, titled "Hours of Operation for Auto Body Shops and Car Washing Establishments".

Background :

At its meeting on February 14, 2000, the Licensing Sub-Committee considered the following reports:

- (February 1, 2000) from the Acting Commissioner, Urban Development Services, reporting, as requested, on the issue of distances between car washing establishments and residential zones, and different classes of car washing establishments, and recommending that this report be received for information;
- (January 11, 2000) from the Acting Commissioner, Urban Development Services, reporting on the issue of hours of operation for auto body shops and car washing establishments, and recommending that:
 - (1) a program of targeting problem locations be adopted; and
 - (2) the by-law not be amended at this time
- (February 4, 2000) from the City Solicitor, responding to the Licensing Sub-Committee's request for a legal opinion respecting City Council's authority to regulate the hours of

operation for coin-operated car wash businesses, and recommending that this report be received for information.

The Sub-Committee also had before it a communication (February 14, 2000) from Jim Caranci, President, Bodylines Auto Body, in opposition to regulating hours.

The following persons addressed the Sub-Committee respecting hours of operation for autobody shops:

- Cesar Palacio, Executive Assistant to Councillor Disero
- John Norris, Toronto Collision Repair Society
- Bill Davis, Ontario and Toronto Automobile Dealers' Association

The following persons addressed the Sub-Committee respecting hours of operation for car washing establishments:

- Jim Kitchen, Petro-Canada
- Brad Goetz, Canadian Car Wash Association.

(Report dated February 1, 2000, from the
Acting Commissioner of Urban Development
Services, addressed to the Licensing Sub-Committee)

Purpose:

To report on the issue of distances between car washing establishments and residential zones, and different classes of car washing establishments.

Financial Implications and Impact Statement:

There is no financial implication connected to this report.

Recommendation:

It is recommended that this report be received for information.

Background:

At its meeting on January 24, 2000, the Licensing Sub-Committee received a report on the issue of regulating the hours of operation for auto body shops and car washing establishments. At that time, a concern was expressed with respect to noise problems relating to coin-operated car washing establishments. As a result, a further report was requested on distances between car washing establishments and residential zones. In addition, the Sub-Committee requested information on different classes of car washing establishments and a report from Legal Services.

Comments:

Classifications of Car Washing Establishments:

At the present time, Part 3 of Schedule 24 of Licensing By-law 20-85 contains four (4) classifications for car washing establishments. The classifications are:

“Dry Mechanical Car Wash” means a facility for washing cars where the car is moving through a series of cleaning and drying processes.

“Wet Mechanical Car Wash” means a facility for washing cars without a drying process where the vehicle is moving through a cleaning process only.

“Stationary Mechanical Car Wash” means a facility for washing cars without a drying process where the vehicle remains in a stationary position throughout the cleaning process.

“Manual Car Wash” means a facility for washing vehicles by means of a hand held device.

Coin-operated car washing establishments of the kind that created the noise concern would appear to fall within the last classification.

Separation from Residential Zones:

It was suggested at the Sub-Committee that the width of a road allowance may provide a satisfactory separation from a residential zone.

The width of a road allowance can vary considerably. The following table compiled from information received from the City Surveyor describes types of road allowances along with their widths.

Characteristic	Local	Collector	Minor Arterial	Major Arterial	Expressway
Road Allowance (m)	15-22	20-27	20-30	20-45	45+

Conclusions:

The classification of “Manual Car Wash” as currently defined would appear to include a coin-operated car washing establishment.

If the Licensing Sub-Committee is of the opinion that it is desirable that the hours of operation for a “manual car wash” within a specified distance of a residential zone be limited, it is suggested that the City Solicitor, in consultation with the Commissioner of Urban Development Services, be authorized to prepare and introduce in Council a by-law to amend Parts 3 of Schedule 24 of Licensing By-law No. 20-85, in accordance with the time and distance restriction recommended by the Sub-Committee.

Contact:

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(Report dated January 11, 2000 from the
Acting Commissioner of Urban Development Services,
addressed to the Licensing Sub-Committee)

Purpose:

To report on the issue of hours of operation for auto body shops and car washing establishments.

Financial Implications and Impact Statement:

There is no financial implication connected to this report.

Recommendations:

It is recommended that:

- (1) a program of targeting problem locations be adopted; and
- (2) the by-law not be amended at this time.

Background:

At its meeting on December 7, 1999, the Licensing Sub-Committee requested a further report on the issue of regulating the hours of operation for auto body shops and car washing establishments.

The rationale for regulating hours of operation for any business is to minimize the impact of the business on the neighbouring community. Most licensed businesses recognize that in order to be successful they must maintain a good image and work with the community by being a good neighbour and respecting the community's right of enjoy of their property.

Auto Body Shops

As previously reported, a pilot project was undertaken in the West District. The area in question had a history of problems associated with public garages, which included three (3) auto body shops. Over the years several of the buildings had deteriorated and the operators were found using the yards of the properties for working on vehicles and the storage of vehicle parts. In addition, vehicles were being parked on the City boulevards without the necessary permit. The pilot project brought together enforcement staff of Municipal Licensing and Standards (zoning, property standards and licensing) and Works and Emergency Services (boulevards) in an effort to address the issues resulting from the operation of the garages.

The project was a success, repairs have been made to many of the buildings, and yards have been cleaned up. In the case of boulevard parking, permits were issued in some cases; in others, curbstones were installed to restrict parking on the boulevard. Although we have not as yet achieved total compliance, major improvements have taken place.

A telephone survey has been conducted of approximately 40 licensed auto body shops within the City of Toronto. The results of the survey indicate that approximately 90% of auto body shops in the City are open between 7:00 a.m. and 6:00 p.m., Monday through Friday, and between 9:00 a.m. to 12:00 noon on Saturdays.

As a result of the survey, it would appear that the vast majority of licensed auto body shops are operating within reasonable hours.

In the case of unlicensed auto body shops, strict enforcement of existing licensing provisions and any other applicable by-laws such as property standards and noise control would resolve the majority of problems.

Car Washing Establishments

I have also been asked to report on car washing establishments.

According to Mr. Bob Clapp, Vice-President of the Ontario Division of the Canadian Petroleum Products Institute, approximately 50% of all car washing establishments in Toronto are owned and operated by the major oil companies. These locations are all operated in conjunction with gas bars. At least twenty-three (23) locations have been identified as twenty-four (24) hour operations. The balance of the car washes operate during hours which start no earlier than 7:00 a.m. and continue with the odd exception until approximately 8:00 p.m. or 9:00 p.m.

A telephone survey of eighteen (18) privately-owned car washing establishments revealed that with few exceptions the hours of operation are 8:00 a.m. to 6:00 p.m., Monday to Saturdays. Of those that open on Sunday, the hours are generally 9:00 a.m. to 4:00 p.m. The two (2) coin-operated car washing establishments that were included in our survey were found to be open twenty-four (24) hours a day, seven (7) days a week.

In the case of car washing establishments, we again found that the hours of operation appear to be reasonable given the nature of the business.

Comments:

A by-law restricting hours of operation for auto body shops and car washing establishments may not result in resolving the real problem within most communities; namely, property maintenance, parking and noise.

As displayed in the pilot project undertaken in the West District, the problems most commonly identified in these types of business operations can be resolved through targeted, co-ordinated and consistent enforcement of existing by-laws.

Licensing By-law

If the Licensing Sub-Committee is of the opinion that it is desirable that the hours of operation for auto body shops and car washing establishments within residential zones or within 122 metres of residential zones be limited to 7:00 a.m. to 9:00 p.m. (Monday to Friday, inclusive) and 9:00 a.m. to 6:00 p.m. (Saturday and Sunday), the City Solicitor, in consultation with the Commissioner of Urban Development Services, should be authorized to prepare and introduce to Council, a by-law to amend Parts 1, 3 and 4 of Schedule 24 of Licensing By-law No. 20-85.

Prior to introduction of the bill in Council, it is recommended that this matter be scheduled for public deputation at your next available meeting.

Conclusions:

A program targeting problem locations such as the one carried out in the West District to resolve problems which might be commonly associated with any public garage, including auto body repair shops and car washing establishments, has proven to be effective.

A continued policy of targeting problem locations will address most community concerns without the need to regulate the hours of operation of all auto body and car washing establishments within the City.

Contact:

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(Report dated February 4, 2000, from the
City Solicitor, addressed to the Licensing Sub-Committee)

Purpose:

The purpose of this report is to respond to the Licensing Sub-Committee's request for a legal opinion respecting City Council's authority to regulate the hours of operation for coin-operated car wash businesses.

Financial Implications and Impact Statement:

There are no financial implications resulting from the adoption of this report.

Recommendation:

It is recommended that this report be received for information.

Background:

At its meeting of January 24, 2000, the Licensing Sub-Committee requested that the City Solicitor provide a legal opinion on the authority of City Council to regulate the hours of operation of coin-operated car washes. Specifically, the Licensing Sub-Committee requested a legal opinion on whether or not coin-operated car washes constitute a class of business such that the hours of operation can be regulated without regulating the hours of operation of other types of car wash facilities.

Comments:

I understand from the comments and discussions at the meeting of the Licensing Sub-Committee on January 24, 2000 that the concern that arises from coin-operated car washes is that, because these facilities are unstaffed or have minimal staffing, the businesses have no control over the noise and other disruptive and unsafe behaviour of users of the car wash. The legal issue that arose at the meeting of the Licensing Sub-Committee is whether or not coin-operated car washes constitute a distinct class of business such that their hours of operation may be regulated differently from other car wash businesses.

For the reasons described below, it is my opinion that coin-operated car washes do constitute a distinct class of business such that their hours of operation may be regulated differently from other car wash businesses.

I understand from staff of the Municipal Licensing and Standards Division that coin-operated car washes are usually 24-hour operations. They are usually unstaffed and are self-serve facilities. At these facilities, vehicle owners wash their cars themselves using water and soap from a hose which is activated after coins are inserted into a machine. The feature that distinguishes these coin-operated car washes from other car washes is that the vehicle owners wash the cars themselves, without the involvement or supervision of an attendant.

The general authority of City Council to enact by-laws for the licensing, regulating and governing businesses is contained in sections 257.2 to 257.7 of the *Municipal Act*. Under clause 257.2(2)(e) of the *Municipal Act*, City Council may define classes of businesses and separately licence, govern and regulate each class. Under sub-clause 257.2(2)(f)(ii) of the *Municipal Act*, City Council may impose conditions on business licences, restricting the hours of operation of the licensed businesses.

Car wash businesses are currently regulated as a category of public garages under Schedule 37 of By-law No. 20-85 of the former Metropolitan Council, as amended. Subsection 1(2) of Part 3 to Schedule 37 defines four types of car wash facilities: dry mechanical car wash, wet mechanical car wash, stationary mechanical car wash and manual car wash. Under Schedule 37, regulations pertaining to vehicle waiting areas and vehicle entrance ramps vary according to the type of car

wash facility. Accordingly the different types of car wash facilities are, to some extent, currently regulated differently.

In my opinion, based on the nature of the coin-operated car wash facilities, the *Municipal Act*, and Schedule 37 of By-law No. 20-85, the business of coin-operated car washes is sufficiently distinct from other car wash businesses such that it may constitute a separate class of business. Accordingly, in my opinion, City Council may enact by-laws to regulate the hours of operation of coin-operated car washes without regulating the hours of other classes of car wash businesses.

This report only addresses the legal issue arising from City Council's authority to define, licence and regulate classes of business. This report does not address any operational or policy issues arising from the proposed regulation. I understand from staff of the Municipal Licensing and Standards Division that they have considered the operational impact of the proposed regulation on coin-operated car wash facilities and that coin-operated car wash machines can be easily modified to create a shut-off system. Further, I understand from staff of the Municipal Licensing and Standards Division that regulating the hours of operation of businesses under the category of "manual car wash" will only affect coin-operated car wash facilities and will not have any impact on other businesses not intended to be subject to the proposed regulations. Finally, I understand from staff of the Municipal Licensing and Standards Division that the proposed regulation of the hours of coin-operated car wash facilities is intended to apply uniformly across the City and that there is no conflict between the proposed regulation and any applicable zoning by-laws. Based on this information, it is my opinion that there is no legal impediment to the proposed regulation of the hours of operation of coin-operated car wash facilities.

Conclusions:

It is recommended that this report be received for information.

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The Planning and Transportation Committee also submits the following report (May 18, 2000) from the Commissioner of Urban Development Services:

Purpose:

To report on the criteria for granting exemptions to the hours of operation for manual coin-operated car wash establishments.

Financial Implications and Impact Statement :

There is no financial implication connected to this report.

Recommendations :

It is recommended that:

- (1) the criteria for approval of extended hours of operation for manual coin-operated car washing establishments be adopted;
- (2) the Executive Director of Municipal Licensing and Standards or his or her designate, be authorized to receive and consider applications for extended hours of operation for manual coin-operated car washing establishments;
- (3) where there are reasonable grounds to believe that an applicant is unable to comply with the established criteria for granting extended hours, the Executive Director of Municipal Licensing and Standards or his or her designate be authorized to not grant the application; and
- (4) any request for a hearing on the decision not to grant approval for extended hours may be made to the Licensing Tribunal within 30 days of the decision.

Background :

At its meeting on May 4, 2000, the Licensing Sub-Committee, as part of its decision, recommended that Schedule 24 of Licensing By-law 20-85 be amended so that the standard hours of operation for manual coin-operated car wash establishments located within a 122-metre distance from residential properties be as follows:

7:00 a.m. – 9:00 p.m.	(Mondays to Sundays during the winter months)
7:00 a.m. – 11:00 p.m.	(Mondays to Sundays during the summer months beginning June until September)

The Sub-Committee further recommended that manual coin-operated car wash establishments be permitted to apply for extended hours of operation and that the Commissioner of Urban Development Services report to the Planning and Transportation Committee on appropriate conditions with respect to extended hours of operation for manual coin-operated car wash establishments located within a 122-metre distance from residential properties.

Comments :

If the recommendations of the Licensing Sub-Committee are adopted, any person who is licensed or is applying for a licence may apply for an exemption to extend the hours of operation for a manual coin-operated car washing establishment.

When an application is made for extended hours, it would be reviewed and upon being satisfied that the applicant can meet the criteria established for extended hours, the application would be granted.

If it is found that an applicant cannot meet the established criteria, the application would not be granted and the applicant would then have the opportunity to apply for a hearing before the Licensing Tribunal.

Criteria:

The criteria that we are recommending in connection to applications for extended hours are as follows:

- (1) signs must be posted in compliance with the criteria to be established by the Executive Director of Municipal Licensing and Standards or his or her designate. Such signs shall prohibit the playing of music or any other sound which may be disturbing to the local residents;
- (2) signs described in Item 1 must be illuminated and made clearly visible only to persons on the site;
- (3) adequate artificial light must be provided on the site to maintain a minimum level of illumination of 10 lux (0.9 foot-candles) measured at the floor or surface level;
- (4) the site must be under the constant supervision of an employee at all times; and
- (5) the site must be maintained in compliance with all terms and conditions of any applicable site plan agreement.

Conclusions:

If the Committee is of the opinion that it is desirable that the hours of operation for manual car washing establishments located within 122 metres of residential properties be regulated and that conditions be imposed on any approvals to extend those hours as recommended by the Licensing Sub-Committee, it is recommended that the criteria and procedure as outlined in this report be adopted and that the City Solicitor, in consultation with the Commissioner of Urban Development Services, be authorized to prepare and introduce to Council a bill to amend Schedule 24 of Licensing By-law No. 20-85, to give effect to such changes.

Contact:

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The Planning and Transportation Committee reports, for the information of Council, also having had before it during consideration of this matter, the following communications:

- (March 13, 2000) from David J. Armstrong, President, Cango Inc. (appended to the transmittal letter (March 23, 2000) from the City Clerk, Planning and Transportation Committee), requesting that the report be deferred for one month to enable Cango Inc. to conduct a full review of the issues, and advising that the proposed amendment to By-law 20-85 would have a severe impact on business operations;
- (March 13, 2000) from Bradley Goetz, Canadian Carwash Association (appended to the transmittal letter (March 23, 2000) from the City Clerk, Planning and Transportation Committee), supporting the recommendations that the existing By-law not be amended and a system be developed to deal with problem locations and advising that they are willing to deal with the City to resolving problems;
- (March 21, 2000) from Councillor Miller (appended to the transmittal letter (March 23, 2000) from the City Clerk, Planning and Transportation Committee), endorsing the request of the Ripley Area Residents Group Ltd. as set out in their letter of March 20, 2000;
- (March 31, 2000) from Kevin Gallagher, Vice-President, TerraChoice Environmental Services Inc. (appended to the transmittal letter (May 5, 2000) from the City Clerk, Licensing Sub-Committee);
- (April 27, 2000) from Aric Levy, Owner, Sheppard Provost Car Wash Limited (appended to the transmittal letter (May 5, 2000) from the City Clerk, Licensing Sub-Committee);
- (April, 2000) from Domenic DiMonte, Manager, Crosstown Car Wash (appended to the transmittal letter (May 5, 2000) from the City Clerk, Licensing Sub-Committee);
- (April 27, 2000) from Donald Hux, Director, Canadian Car Wash Association (appended to the transmittal letter (May 5, 2000) from the City Clerk, Licensing Sub-Committee);
- (April 26, 2000) from David Armstrong, President, and David Woodcroft, Car Wash Operations Manager, Cango Inc. (appended to the transmittal letter (May 5, 2000) from the City Clerk, Licensing Sub-Committee);
- (February 14, 2000) from Jim Caranci, President, Bodylines Auto Body (appended to the transmittal letter (February 17, 2000) from the City Clerk, Licensing Sub-Committee), in opposition to regulating hours;
- (June 9, 2000) from Jeffery S. Lyons, Morrison, Brown, Sosnovitch, Barristers and Solicitors, requesting that the matter be deferred to the next meeting for deputations; and
- (June 8, 2000) from Vito Cosentino, Wash 'N Go Self Serve Car Wash, not supporting car washes to be manned in overnight hours.

The following persons addressed the Committee with regard to this matter:

- Dave Woodcroft, CANGO Inc.;
- Vito Cosentino, Wash 'N Go; and
- Jeffrey S. Lyons, Morrison, Brown, Sosnovitch.

(City Council on July 4, 5 and 6, 2000, had before it, during consideration of the foregoing Clause, the following report (July 5, 2000) from the City Solicitor:

Purpose:

The purpose of this report is to respond to the request by the Planning and Transportation Committee for a legal opinion respecting notification of hearings before the Toronto Licensing Tribunal in applications for exemptions from the proposed regulations governing the hours of operation of manual coin-operated car wash establishments.

Financial Implications and Impact Statement:

No financial implications arise from the adoption of this report.

Recommendation:

It is recommended that this report be received for information.

Background:

At its meeting of June 12, 2000 the Planning and Transportation Committee recommended the adoption, with amendments, of the recommendations contained in the report from the Commissioner, Urban Development Services, entitled "Hours of Operation - Manual Coin-operated Car Wash Establishments." The Committee requested that I report directly to City Council on whether or not notification of hearings before the Toronto Licensing Tribunal respecting applications for exemptions may be given in the same manner as that given by the Committee of Adjustments or by some alternative approach.

Comments:

The issue of notification of hearings is directly related to the issue of a person's status at the hearing. In all judicial and quasi-judicial proceedings, persons may become directly involved in the proceeding by two main mechanisms. The first is by testifying as a witness in the proceeding and the second is by having status as a party in a proceeding. Only persons who have status as a party are entitled to notice of the hearing.

In the context of the Committee of Adjustments, under section 45(6) of the Planning Act, when conducting minor variance hearings, the Committee is required to "hear the applicant and every other person who desires to be heard in favour of or against the application".

Because “every other person who desires to be heard” may be a party in a hearing before the Committee of Adjustments, under O. Reg. No. 200/96 made under the Planning Act, the Committee must either provide notification of such hearings to every owner of land within 60 metres of the area to which the application applies, or provide notification by publication in local newspapers. In addition, the Committee must post notices of hearings at the subject property.

Party status and community involvement in hearings before the Toronto Licensing Tribunal

Unlike hearings before the Committee of Adjustments, for the reasons described in further detail below, the only parties in hearings before the Toronto Licensing Tribunal are the Municipal Licensing and Standards Division (“MLSD”) and the licensees whose licences are under consideration at the hearings. Accordingly, only the licensee who is the subject of the hearing is entitled to notice of the hearing. However, as described in detail below, other persons who may have evidence relevant to the matters in issue before the Tribunal may become involved in hearings as witnesses called on behalf of the parties. In this way, all evidence relevant to the matters to be determined at the hearing may be considered by the Tribunal.

The Tribunal is a quasi-judicial administrative tribunal governed by the Statutory Powers Procedure Act and the rules of natural justice. In all hearings before it, the Tribunal's primary consideration, with regard to issues that may be raised at a hearing, is the manner and extent to which these issues relate to the conduct of the business by the licensee.

By law, the MLSD is required to provide the licensee with reasonable notice of the allegations that may result in an adverse decision against the licensee, so that the licensee is notified of the case to be met. At a hearing, a licensee may be represented by counsel or an agent, may call and examine witnesses and present arguments and submissions to the panel hearing the matter. The conduct of the proceeding must ensure procedural fairness to the licensee because failure to meet these requirements may result in the decision of the Tribunal being overturned by a Court on an application for Judicial Review.

Prior to a hearing being held to determine whether or not a car wash facility should be granted an exemption from the proposed regulation of hours of operation, an investigation must be conducted by MLSD staff to determine whether or not there is sufficient evidence available to support a finding that the licensee is not entitled to an exemption. This investigation includes obtaining whatever relevant evidence may be available from persons with direct knowledge of the conduct of the business by the licensee. Depending on the circumstances of the case, the investigation by MLSD staff may include consultations with other enforcement agencies such as the Toronto Police, residents of the community in which the premises is located, and ward councillors.

In the course of their investigation, staff must assess the available relevant facts to determine how those facts may be properly introduced as evidence by witnesses in the hearing in accordance with the Statutory Powers Procedures Act and the rules of natural justice. The primary criteria by which a person may be called to testify as a witness in a proceeding is whether or not that person has relevant and credible evidence to give on the matters in issue in the proceeding.

With respect to party status at Tribunal hearings, unlike the Planning Act and other provincial statutes, such as the Alcohol and Gaming Regulation and Public Protection Act, 1996 which specify who may be a party at hearings, neither the Municipal Act nor the City of Toronto Acts, 1997 specify the persons entitled to status as a party in a proceeding before the Tribunal. However, under the Statutory Powers Procedure Act, a statute of general application which provides minimum rules of procedure governing administrative tribunals including the Toronto Licensing Tribunal, party status is defined as follows:

“5. The parties to a proceeding shall be the persons specified as parties by or under the statute under which the proceeding arises or, if not so specified, persons entitled by law to be parties to the proceeding.”

Accordingly, in determining which persons may be entitled to status as parties in Tribunal hearings, the issue to be considered is whether such persons are “persons entitled by law to be parties to the proceedings”.

While the issue of party status, otherwise known as “standing”, has been considered by the courts in various contexts, most of the case law relates to standing in constitutional challenges to the validity of legislation or governmental action. The general rule adopted by the courts in these cases is that where a person has a “direct and substantial” interest in a proceeding, a Court may, in the proper exercise of its discretion, grant that person status as a party.

*Whether or not the person has a “direct and substantial” interest in the proceedings will depend on the circumstances of the proceeding in question. “Interest” is not restricted to financial and property interests but may include other, less tangible interests. However, Courts have consistently held that standing can not simply be granted to anyone who seeks it. An example of the “direct and substantial” interest test in the licensing context is the 1989 Ontario High Court of Justice decision in *M. v. Ontario (Child and Family Services Review Board)*. That case involved a hearing to determine whether a licence issued to a residential placement home should be renewed. The Board refused to grant standing at the hearing to the children who were residents of the home. In upholding the Board's decision, the Court stated that the relevant factors under consideration were the nature of the interests involved, the relevance of those interests to the matters in issue, and the effect of the decision on the licensee.*

In my opinion, given the nature of Tribunal hearings, it would be exceedingly rare for anyone other than the licensee to have a “direct or substantial” interest in the proceeding. For example, while members of the community in which the business is located may be indirectly affected by the outcome of a Tribunal hearing by reason of the location of the business, in my opinion, in most cases that interest would not be sufficiently “direct or substantial” to afford those persons status as parties in the proceeding.

If a person does have a direct and substantial interest in the proceedings, the factors to be considered by a Court or Tribunal in the exercise of its discretion in determining whether or not the person should be granted status as a party include the following:

1. *the nature of the issues to be determined in the proceeding;*
2. *the degree of likelihood that the person will make a useful contribution to the proceeding;*
3. *whether the interests of the person are adequately represented without the person being made a party;*
4. *the nature of the proceedings; and*
5. *whether or not adding persons as parties may result in injustice to the immediate parties.*

Having regard to these factors, it is my opinion that it would be rare for any person other than a licensee or applicant to be entitled to standing in a hearing before the Tribunal.

Regarding the nature of the proceeding, while there is little case law directly on this issue, it appears that where a proceeding is private and disciplinary in nature it is undesirable to grant party status to persons other than the person subject to the proceeding. As stated by the Ontario Securities Commission in Re Zenmac (1982) where it dismissed an application for standing a proceeding which was essentially disciplinary in nature:

“The prosecution of the complaints is in the hands of staff counsel. The other parties to the proceedings are the individuals and companies against whom the proceedings are directed. To grant the Applicants status, that is to permit the intervention as a party of someone who might be perceived as being a second prosecutor, would not be appropriate.”

This issue of a person who may be perceived as a second prosecutor is particularly significant in the context of Tribunal hearings, the potential outcome of which may be to limit a licensee's entitlement to make a living in his or her business of choice. In such hearings, the rules of natural justice require that the person be afforded procedural fairness. Granting party status to persons who may be perceived as a “second prosecutor” could result in a breach of the rules of natural justice and could, accordingly, result in the Tribunal's decision being overturned by the Courts sitting in review of that decision.

In addition to the issue of procedural fairness, since any relevant testimony of persons other than the licensee or applicant may be put forward in a Tribunal hearing by the Legal Services Division presenting the case on behalf of the MLSD, in my opinion, it is highly unlikely that those persons could make any further, useful contribution if they were granted status as parties in the proceeding. Since the evidence of persons not entitled to be parties is considered by MSLD staff during the course of their investigation and since such persons may testify at a hearing before the Tribunal if their testimony is relevant to the facts in issue, it would be unnecessary for such persons to be added as parties to the hearing.

For completeness, with respect to the broader issue of the consideration of the public interest in hearings before the Tribunal, I advise that at its meeting of October 27 and 27, 1999, City

Council adopted Report No. 5, Clause No. 4 of The Planning and Transportation Committee, entitled "Comprehensive Review of the Licensing By-law." Recommendation No. 2 contained in this report endorses "a change to the Municipal Act to allow for refusal or revocation of a business licence when the operation of a business is wilfully detrimental to the quality of life in a community, similar to those set out in the Liquor Licence provisions." I understand that the Executive Director, MLSD, is in the process of reviewing this matter with the appropriate provincial officials as part of the comprehensive review of the licensing by-law.

Conclusions:

It is recommended that this report be received for information.

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