

## STAFF REPORT ACTION REQUIRED

# **Tobacco Retail Licence Fees**

Date:	September 21, 2009				
То:	Licensing and Standards Committee				
From:	Executive Director, Licensing and Standards				
Wards:	All				
Reference Number:	P·///009/C/hister B/ML S/Ls09019mls				

## SUMMARY

The purpose of this report is to compare Toronto's tobacco retail licence fee with other municipalities in Ontario and to recommend whether or not the City of Toronto should increase its business licensing fees for the sale of tobacco.

It is recommended that business licensing fees for Smoke Shops and businesses that are endorsed to sell tobacco remain unchanged. Municipal Licensing and Standards (ML&S) concludes that there is no valid municipal purpose to increase the current licensing fees or to charge a separate licensing fee for the retail sale of tobacco. Licensing fees are cost recovery and administering this type of business would not create additional costs to ML&S. If a licensing fee is not reasonably tied to the cost of administration and enforcement, it could be interpreted as indirectly imposing a sales tax on the sale of tobacco. Pursuant to 267. (2)(5)(iv) of the *City of Toronto Act* (COTA), the City is specifically prohibited from imposing a sales tax on the purchase of tobacco. In addition, retail tobacco sales are regulated by the Smoke Free Ontario Act, which is enforced by Public Health and funded by the Province.

This report was prepared in consultation with Public Health and Legal Services.

## RECOMMENDATIONS

#### The Executive Director of Municipal Licensing and Standards recommends that:

1. Chapter 545, Licensing, of the City of Toronto Municipal Code remain unchanged for business licensing fees for Smoke Shops category B45 and endorsements to businesses under class 004 for the sale of tobacco.

#### **Financial Impact**

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

## **DECISION HISTORY**

On June 10, 2009 the Licensing and Standards Committee referred the following to the Executive Director, Municipal Licensing and Standards and the Medical Officer of Health:

- a letter dated June 9, 2009 from Councillor Howard Moscoe (<u>http://www.toronto.ca/legdocs/mmis/2009/ls/bgrd/backgroundfile-22200.pdf</u>) to the Executive Director, Municipal Licensing and Standards for a report back to the Committee on October 8, 2009 with a request to include a comparison of all Tobacco Retail Licence fees with all Ontario municipalities; and
- 2. requested the Medical Officer of Health to provide comments to this meeting.

## **ISSUE BACKGROUND**

The Canadian Cancer Society contacted the chair of the Licensing and Standards Committee with concerns that the City of Toronto was not charging a licence fee to retailers who sell tobacco.

Municipal Licensing and Standards (ML&S) does not charge a separate fee for a business licence endorsement to sell tobacco, however ML&S does have a licence specific to businesses whose primary activity is the sale of tobacco.

## COMMENTS

## **Municipal Licensing and Standards' Licensing Process**

When licensing businesses in the City of Toronto, ML&S establishes the primary business activity in order to determine the category in which to issue the licence. Where the primary business activity is to own or keep a store or shop where tobacco, cigars or cigarettes are sold, or offered for sale, by retail, a Smoke Shop category is assigned to the licence. The 2009 licence fee for a Smoke Shop is \$555.17 and renewal is \$258.

When a business has tobacco cigars or cigarettes for sale but it is not the primary business activity, the owner must apply for the appropriate licence to reflect the primary business activity and must also indicate that he/she will be selling tobacco, cigars and/or cigarettes. ML&S staff will add an endorsement to the business licence in order to permit the sale of tobacco, cigars and/or cigarettes without charging an additional licensing fee. By adding an endorsement to the licence, all regulations and requirements for the business activities involving the sale of tobacco, cigars and cigarettes must be met in order to carry out the business.

The number of Smoke Shop licences as well as the number of other businesses that carry out the sale of tobacco, cigars and cigarettes is tracked in the licensing computer system. The ML&S Licensing System identifies which businesses are licensed to carry out the sale of tobacco, cigars and cigarettes as well as their classification.

As of August 25, 2009 the Licensing System indicated the following number of licences:

- 103 licensed Smoke Shops (10 new, 93 renewed).
- 3,812 business licenses (excluding Smoke Shops) had an endorsement to permit the sale tobacco, cigars and cigarettes.
- There were a total of 646 new licences issued and 3,166 were renewed with an endorsement.
- The majority of the endorsements were for retail store (food) with a total of 2,396 licences issued.

An endorsement was added to the following types of business licences with 2009 fees for new licences:

- billiard halls \$372.30
- retail store (food) \$328.26
- public garage \$375.61
- eating establishment \$436.18
- entertainment establishment/nightclub \$424.72

Business licensing fees are cost recovery and take into consideration processing and licensing fees. The processing fee mainly covers administrative fees, while the licensing fees address investigation, enforcement, prosecution and other costs.

In situations where any person holding a licence under Municipal Code Chapter 545-4 O applies for an amendment to the licence at any time other than renewal of the licence, he or she shall pay an amendment fee of \$54.00.

## Toronto Public Health's Inspection and Enforcement Process for Businesses That Sell Tobacco, Cigars or Cigarettes

Tobacco retailers are inspected annually by Public Health to ensure that the Smoke –Free Ontario Act and regulations are followed. Inspections include:

- Ensuring that required signs are posted
- Ensuring that tobacco is properly packaged and stored
- Education for tobacco retailers regarding the requirements of the Act
- Test shopping (where a person under the age of 19 attempts to purchase tobacco under the supervision of Tobacco Enforcement Inspectors).

See Appendix A: Tobacco Vendor Inspection form.

#### Penalties and fines under the Smoke-Free Ontario Act

Tobacco retailers are heavily regulated by the tobacco control strategy of the *Smoke-Free Ontario Act* (the "Act"). The Act:

- restricts how tobacco products are displayed and promoted by retailers
- mandates that retailers post signs regarding the need for government I.D., age restrictions and health warnings
- strengthens the restriction on selling tobacco products to young people
- details specific regulations and exemptions for Tobacconist who are registered with the province.

Retailers with convictions under the Act may face an automatic prohibition of selling, storing or accepting delivery of tobacco products. A prohibition may last for six to 12 months, depending on the number of convictions for tobacco sales offences.

A person who contravenes section 3.1 of the Act is subject to a ticket in the amount of \$250. Serious offences where a summons is issued may be subject to higher fines.

The Act provides that a corporation could face a maximum fine of \$10,000 for a first offence and \$150,000 for three or more offences. An individual could be subject to a maximum fine of \$4,000 for a first offence and \$100,000 for three or more offences.

#### Statistics on the number and types of convictions

Under the Smoke-Free Ontario Act that came into effect in 2006, Toronto Public Health reported enforcing the following offences for the retail sale of tobacco between May 31, 2006 and December 31, 2008:

• 366 convictions for selling tobacco to persons under the age of 19

- 302 convictions for selling improperly packaged tobacco or no health warning on the package
- 2 convictions for failing to post age restrictions and health warning signs
- 28 orders were issued to retailers in Toronto for the automatic prohibition of the sale of tobacco. When an order is issued it is posted with the Ministry of Health Promotion, and the business is regularly monitored by Public Health enforcement staff.
- 558 complaints were received by Public Health about tobacco retailer sales offences

The sale of tobacco is regulated under the Smoke-Free Ontario Act and is enforced by Public Health. In the time span between May 31, 2006 and December 31, 2008 there were a total of 558 complaints made to Public Health and 670 convictions relating to the sale of tobacco. In cases where there were multiple convictions, orders for automatic prohibition for the sale of tobacco were made a total of 28 times.

The threat of automatic prohibition for the sale of tobacco and the high fines create incentive for retailers to operate the business as regulated under the Smoke-Free Ontario Act. In addition, Toronto retailers must follow the regulations under the Toronto Municipal Code, Chapter 545, Licensing bylaw which if not followed puts the business licence in jeopardy. If a business licence is not in compliance with the licensing bylaw, it can be referred to the Toronto Licensing Tribunal for a decision to be made as to whether the licence should be revoked, suspended or have a condition placed on it.

## Tobacco Retail Licence Fee Comparison for Ontario

ML&S staff examined twenty-six Ontario municipalities in order to determine their licensing fees for a comparison with the City of Toronto. Table 1. provides updated fees for municipalities that were identified in the letter provided by Councillor Howard Moscoe, the chair of the Licensing and Standards Committee. Additional municipalities in Ontario were also included in Table 1. to reflect the municipalities that do not licence the sale of tobacco.

While the majority of Ontario municipalities examined did have a separate licence for the sale of tobacco, cigars and cigarettes, municipalities such as Barrie, Brockville, Kitchener, Orillia, Oshawa, Stratford, Thunder Bay and Waterloo did not.

Barrie and Brockville stopped licensing the sale of tobacco since January 1, 2009 and 2005 respectively.

In addition, Kenora does not have a licence specific to the sale of tobacco, however they do licence tobacconist under a "Sales" licence category which also includes peddler/hawker, fruit stand and salesman.

Halton Hills also does not have a separate licence for the sale of tobacco; instead the licence is a combined convenience food and tobacco licence.

As mentioned earlier, Toronto licences Smoke Shops and allows other businesses to carry on the sale of tobacco, cigars and cigarettes as an endorsement on the business licence without an additional licensing fee. The endorsement is subject to the business meeting all of the requirements (such as inspection, Smoke-Free Ontario Act and provisions of the Toronto Municipal Code Chapter 545, Licensing).

Fable 1.     Summary of Tobacco Retail Licence Fees					
Municipality	Initial fee (\$)	Renewal fee (\$)	Notes		
Barrie	0		Do not license (as of Jan. 1, 2009)		
Brampton	201				
Brockville	0		Do not license (as of 2005)		
Burlington	140				
Chatham-Kent	75				
Cornwall	40	40			
Guelph	65	55			
Halton Hills	120		Combined convenience food and tobacco licence		
Hamilton	196	143	\$53 of initial fee is for admin. An additional \$155 is charged for health inspection on both new and renewed licences.		
Kenora	125		Under a "sales" category that includes tobacconist, peddler/hawker, fruit stand and salesman.		
Kingston	212	212			
Kitchener	0		Do not license		
Markham	311				
Mississauga	200	145			
Northbay	50	50			
Oakville	240	240			
Orillia	0		Do not license		
Oshawa	0		Do not license		

Table 1. Summary of Tobacco Retail Licence Fees					
Municipality	Initial fee (\$)	Renewal fee (\$)	Notes		
Ottawa	225	225	Includes \$50 admin fee Prior to 2009 fee was \$360 (there was a decrease in fees)		
Richmond Hill	150				
Stratford	0		Do not license		
Sudbury	300	150			
Thunder Bay	0		Do not license		
Vaughan	260	175			
Waterloo	0		Do not license		
Windsor	188	148	(includes additional fees for inspection and admin)		
	Identifies municipalities that do not license the sale of tobacco.				

## Conclusion

It was difficult to provide a conclusive comparison of the licensing fees for the various Ontario municipalities because; some municipalities did not define the business in the same way, nor was the fee structure equal. Some municipalities collapsed their licensing categories to include the sale of tobacco, while others made theirs distinct.

Some municipalities identified specific breakdowns for fees such as administration and inspection costs, while others did not, making it difficult to assess them equally. Another challenge was the definition of tobacconist from municipality to municipality. Some were defined in terms of the primary business activity being the sale of tobacco, while definition included any business that sold tobacco, cigars and cigarettes. Some municipalities had one licence fee for a tobacconist and a separate one for those who sold tobacco, cigars and cigarettes. It was noted in the comparison that while several municipalities did regulate the sale of tobacco products, the nature of the businesses and the fees associated with the operation of the businesses were quite different.

In consultation with Legal Services, it was determined that a licensing fee must be reasonably tied to the cost of administration and enforcement. The regulation and enforcement of tobacco sales are established in the *Smoke-Free Ontario Act*. The inspections and enforcement pertaining to tobacco are carried out by Public Health, and are funded by the Province. Any new fees may be interpreted as indirectly imposing a sales tax on the sale of tobacco, which is specifically prohibited by section 267. (2)(5)(iv) of the *City of Toronto Act*.

## CONTACT

Dawn-Marie Morgan, Policy and Research Consultant ML&S Policy and Planning Services Tel:416-397-5464, Fax: 416 392-5464, Email: <u>dmorgan1@toronto.ca</u>

Rob Colvin, Manager Healthy Environments Public Health, PH Healthy Environment Tel: 416-338-8035, Fax: 416-397-4782, Email: <u>rcolvin@toronto.ca</u>

## SIGNATURE

Jim Hart, Executive Director, Municipal Licensing and Standards

#### **ATTACHMENTS**

Toronto Public Health Tobacco Vendor Inspection Form References

## **APPENDIX A** (Page 1 of 2)

	това	CCO VE	NDOR INSP	ECTION	FORM	TVI #	
PHIIS Premises ID:			Map ≉	ŧ			
Legal Name/Trading As:							
Operating Name: Unit Number:			Street	Number			
				Direction : N/3	S/E/W		
City/Town:		Munici					
Postal Code:			one Number:			Ext.	
Owner Name:			y Contact:				
Vendor Permit #		Date of	of Issue: m	d	У		
Municipal Licence #			Expiry: m	d	У		
	/ (DD)	Time	: HH MM			🗖 РМ	
Inspection Type:			ement Check	Follow up/	aoc delivery   -	Education Other:	
Display & Promotion	omplaint		utomatic Prohibiti	on		Stret.	
Status:	tive ohibition		losed at time of in	spection		onger a Tobacco Ve	ndor
Type of Premises:	onibition dependent Con upermarket/Gro estaurant/Bar	venience St	🗖 Ga	ain Convenie s Station er (Specify)	ence Store	f Business Discount/Dollar St Tobacconist	ore
Test Shopper: Age 15	16 17	Other		Gender:	Male	Female	
Vendor: Own				Gender:		Female	
	nd under		ind over		ak it undetermined		
Action Taken: 1 (Youth Access) 2 3 4	Uested? Yes Educat Educat Verbal	Warning Iss Warning Is	als Provided? sued?			Yes Yes Yes Yes Yes Yes Yes Yes	No No No No No No No No
		No	Bost III	CEOL C	action 9 Infraction	# Tielest @une	naana #
Charge: (Owner/Operator or employee) Part				Part III SFOA Section & Infraction # Ticket/Summe			
Findings: (Display and Promotic 1. Display tobacco products 2. Tobacco products display 3. Tobacco products stored 4. Decorative or illuminated 5. Three dimensional exhibit 6. Promotional material disp 7. More than 3 allowable sig 8. Other display/promotion i Required Signage: Identification sign posted Health Warning/Age Rest sign posted? (/w). Compliant ( <i>Displey Promotion</i> ): Action Taken: ( <i>Displey end Promotion</i> )	in a manner p yed while dispe in a manner th panels and/or ths and/or any c played outside ins? infractions? (mr.) infractions? No 1. Edi 2. Edi 3. Ver	ensing? at permits h promotional ther device, of premises? Yes Yes yes ucation Prov ucational Ma bal Warning	andling by purch lighting present? instrument or er ? No No ided? iterials Provided? j Issued?	aser prior to hancement No-sma Other	255	Yes   Yes	No       No
		tten Warning				Yes	□ No
Warning Issued:	Ves		SFO/	Section #	"S		
Charges Laid: Charge: (Owner/Operator, Er		No Part I	B	art III	SFOA Section	& Ticket/Sur	nmone #
Charge: (Owner/Operator, Er Young Person)	npioyee.				SFOA Section Infraction #	ok TickeD'Sur	ninions#
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Comments:							
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Person in Charge:		Signati	ure:			Date:	
Inspector/Officer:	Officer's	Officer's Signature:			SFO-ID#:	SFO-ID#:	

Information on this form is being collected under the authority of the Smoke-I ree Ontano Act and will be used by the Health Unit for compliance follow-up, statistical analysis and evaluation purposes and may be shared with the Ministry of Health Promotion for similar purposes. Questions about this collection should be circoted to the Director of Healthy Environments.

## **APPENDIX A** (Page 2 of 2)

#### TOBACCO DEFICIENCY LIST

SFOA Section	Infraction Number	Smoke-Free Ontario Act (SFOA)				
3(1)	1000	Sell tobacco to a person who is less than 19 years old.				
3(1)	1023	Supply tobacco to a person who is less than 19 years old.				
3 (2)	1026	Sell tobacco to a person who appears to be less than 25 years old				
3(2)	1027	Supply tobacco to a person who appears to be less than 25 years old				
3(6)	1003	Present identification not lawfully issued to holder.				
3.1(1)(a)	1028	Display tobacco products by means of a countertop display				
3.1(1)(a)	1029	Permit display of tobacco products by means of a countertop display				
3.1(1)(b)	1030	Display tobacco products in manner that permits handling before purchase				
3.1(1)(b)	1031	Permit display of tobacco products in manner that permits handling before purchase				
3.1(2)	1032	Display tobacco products in manner that permits view before purchase.				
3.1(2)	1033	Permit display of tobacco products in manner that permits view before purchase.				
3.1(3)	1034	Promote sale of tobacco products in place where sold or offered for sale				
3.2	1035	Employ or authorize anyone to promote tobacco or the sale of tobacco at any place of entertainment.				
4(1)	1004	Sell tobacco in a designated place.				
5(1)(a)	1005	Sell improperly packaged tobacco.				
5(1)(a)	1006	Offer to sell improperly packaged tobacco.				
5(1)(a)	1007	Distribute improperly packaged tobacco.				
5(1)(a)	1008	Offer to distribute improperty packaged tobacco.				
5(1)(b)	1009	Sell tobacco without a health warning on package.				
5(1)(b)	1010	Offer to sell tobacco without a health warning on package.				
5(1)(b)	1010					
5(1)(b)	1012	Distribute tobacco without a health warning on package. Offer to distribute tobacco without a health warning on package.				
	1012	Sell cigarettes in packages of less than 20.				
5(2)	1013	Offer to sell cigarettes in packages of less than 20.				
5(2)	1014					
5(2)		Distribute cigarettes in packages of less than 20. Offer to distribute cigarettes in packages of less than 20.				
5(2)	1016 1036					
6		Failure to post age restriction and health warning signs				
6	1037	Failure to post identification sign				
7(1)	1019	Permit vending machines for selling or dispensing tobacco.				
8	1020	Failure to submit reports.				
9(1)	1038	Smoke tobacco in enclosed public place				
9(1)	1039	Smoke tobacco in enclosed workplace				
9(1)	1040	Hold lighted tobacco in enclosed public place				
9(1)	1041	Hold lighted tobacco in enclosed workplace				
9(2)	1042	Smoke tobacco in prohibited place or area				
9(2)	1043	Hold lighted tobacco in prohibited place or area				
9(3)(a)	1044	Failure of employer to ensure compliance with section				
9(3)(b)	1045	Failure of employer to give notice that smoking is prohibited				
9(3)(d)	1046	Failure of employer to ensure no ashtrays or similar equipment				
9(3)(e)	1047	Employer allowing person smoking or holding lighted tobacco to remain				
9(6)(a)	1049	Failure of proprietor to ensure compliance with section				
9(6)(b)	1050	Failure of proprietor to give notice that smoking prohibited				
9(6)(d)	1051	Failure of proprietor to ensure no ashtrays or similar equipment				
9(6)(e)	1052	Proprietor allowing person smoking or holding lighted tobacco to remain				
10	1022	Failure to post "no smoking" signs where smoking is prohibited.				
13(4)	1054	Fail to provide an indoor area for traditional Aboriginal use				
14(16)	1055	Hinder, obstruct or interfere with an inspector conducting an inspection.				
16(4)	1056	Sell, store or have tobacco delivered during an Automatic Prohibition at a place where the tobacco sales offences were committed.				
18(5)	1057	Remove a sign posted while an automatic prohibition remains in force.				



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## REFERENCES

# Government of Ontario: Ministry of Health Promotion (2008-2009) *Tobacco Retailers* . Retrieved from:

http://www.mhp.gov.on.ca/English/health/smoke\_free/fact\_sheets/retailers.asp

Note: Links to bylaws and fee schedules for municipalities used in the comparison of tobacco fees. Municipalities that are not listed, their fees were verified though email or phone contact:

City of Brampton: http://www.city.brampton.on.ca/bylaws/licensing.pdf

Municipality of Chatham-Kent: <u>http://www.chatham-</u> <u>kent.ca/cityBundle\_services/downloadsService/downloadfiles/64410d96-585e-4ad5-b8c8-</u> <u>a51cebba7956\_Municipal%20Business%20Licence%20Application.pdf</u>

City of Guelph: <u>http://www.guelph.ca/uploads/Clerks/FINAL-By-</u> law%20Consolidation%20as%20of%20May%2013%202009.pdf

Town of Halton Hills: http://www.town.halton-hills.on.ca/bylaws/pdf/2008-0131.pdf

City of Kingston: http://www.cityofkingston.ca/pdf/bylaws/bl\_2005-10.pdf

Town of Richmond Hill: http://code.municipalworld.com/richmondhill/684.pdf

City of Windsor: http://www.citywindsor.ca/DisplayAttach.asp?AttachID=14613

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