



STAFF REPORT ACTION REQUIRED

Business Licensing Thresholds

Date:	September 16, 2009
To:	Licensing and Standards Committee
From:	Executive Director, Municipal Licensing and Standards
Wards:	All
Reference Number:	P:\2009\Cluster B\MLS \Ls09021mls

SUMMARY

This report is a response to a request from the Licensing and Standards Committee to consider the recommendations from the Chair of the Toronto Licensing Tribunal respecting the City's business licensing thresholds, which were unanimously found by the Tribunal to be vague as a result of the absence of references to specific sections of the Criminal Code.

When first introduced in 2004, the licensing thresholds included references to specific sections of the Criminal Code and other Statutes cited. These references were eliminated in 2005, on recommendation from staff who noted that the references, due to extended time periods under the purview of the thresholds, could under certain circumstances be making reference to erroneous sections.

Despite this, staff agree that fuller descriptions could be beneficial to both staff and Tribunal members and as such are recommending that they be provided in Schedule A of Appendix K.

Staff also recommend a technical amendment, to delete a note in Appendix K, to make the text fully consistent with the 2007 amendments.

The City Solicitor was consulted in the preparation of this report.

Public notice has been given in a manner prescribed in the Toronto Municipal Code Chapter 162, Notice, Public.

RECOMMENDATIONS

The Executive Director of Municipal Licensing and Standards recommends that the Licensing and Standards Committee:

1. Adopt the amendments to Schedule A of Appendix K of Toronto Municipal Code Chapter 545, Licensing, as per Appendix A of this report;
2. Adopt deletion of the note, following 2-I of Appendix K;
3. Adopt January 1, 2010 as the date for the by-law amendments to come into effect;
4. Direct the City Solicitor to prepare the necessary bill, including any stylistic or technical amendments required, to give effect to any recommendations adopted by City Council; and
5. Authorise and direct City staff to take any other action necessary to implement the by-law amendments.

FINANCIAL IMPACT

There are no financial implications beyond those in the current budget arising from the recommendations of this report.

DECISION HISTORY

At its meeting of May 7, 2009, the Licensing and Standards Committee deferred consideration of the April 14, 2009 report from the Executive Director of Municipal Licensing and Standards until a report reviewing Appendix K of Chapter 545, Licensing was completed

(<http://www.toronto.ca/legdocs/mmis/2009/ls/decisions/2009-05-07-ls21-dd.htm> see LS21.4).

The April 14, 2009 report

<http://www.toronto.ca/legdocs/mmis/2009/ls/bgrd/backgroundfile-20666.pdf>

recommended that the issues raised by the Chair of the Licensing Tribunal be referred to staff, including the issue of vagueness created by not including specific section numbers in Appendix K.

ISSUE BACKGROUND

Licensing thresholds are an administrative mechanism used as part of the evaluation process under which new licence applicants and those renewing their licences are scrutinised to determine whether or not the licence should be issued. The thresholds identify offence convictions (and the frequency with which an applicant may be

convicted of the specified offences) that may trigger a staff report to the Toronto Licensing Tribunal (the Tribunal) making a recommendation to either grant (with or without conditions), revoke, suspend or set conditions on a licence. Since their inception in 2004, the licensing thresholds have been amended a number of times to clarify and simplify their application.

COMMENTS

Elimination of section number references

In its May 5, 2005 report to the Planning and Transportation Committee, staff recommended the adoption of an amended Appendix K in which section number references were eliminated due to their tendency to change as Statutes are amended. By specifying specific section numbers in the Bylaw, there is a risk of the incorrect sections being cited if the legislation is amended in the future. And, since references are made to past convictions, there is also a risk of making references to sections that no longer exist or for which the section numbers have changed. The recommended changes to eliminate section numbers were subsequently approved by Council.

Provision of fuller descriptions

Staff concede that direct references to the relevant sections of the cited legislation may make matters clearer before the Tribunal and as such will endeavour to include this information more explicitly in the staff reports that come before the Tribunal.

At the same time, to facilitate business before the Tribunal, staff recommend that Schedule A to Appendix K be revised to have better descriptions. This will provide all parties to the hearings with better information. Staff are not recommending, however, that section numbers be included for the same reasons it provided in its previous report to the Planning and Transportation Committee in 2005.

Deletion of obsolete clause

Since the adoption of the demerit point system in 2007, the thresholds have not applied to other Toronto bylaws and related legislation. As such, staff also recommend that the following note (that follows 2-I of Appendix K) be deleted:

- * *Related legislation may include, but is not limited to, City of Toronto by-laws, Fire Protection and Prevention Act, S.O. 1997, c. 4 (Fire Code); Building Code Act, 1992, S.O. 1992, c. 23; Planning Act, R.S.O. 1990, c. P.13; Health Protection and Promotion Act, R.S.O. 1990, c. H.7; Business Names Act, R.S.O. 1990, c. B.17; Retail Sales Tax Act, R.S.O. 1990, c. R.31; and the Excise Tax Act, R.S. 1985, c. E-15.*

Under the 2007 amendments, any convictions under City of Toronto bylaws or the above cited legislation need to be listed in either Schedule A – Offences and Corresponding Restriction Codes or Schedule B – Demerit Point System).

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SIGNATURE

Jim Hart, Executive Director
Municipal Licensing and Standards

ATTACHMENTS

Appendix A: Amendments to Toronto Municipal Code Chapter 545, Licensing –
Appendix K – Schedule A

Appendix A

Amendments to Toronto Municipal Code Chapter 545, Licensing Appendix K – Schedule A

Criminal Code Offences	Description*	Restriction Code
Explosives	Using explosives; Possession	04
Terrorism	Providing or collecting property for certain activities; Providing or making available property or services for terrorist purposes; Using or possessing property for terrorist purposes; Participation in activity of terrorist group; Facilitating terrorist activity; Instructing to carry out activity for terrorist group; Instructing to carry out terrorist activity	02
Firearms and weapons	Using firearms (including imitation) in commission of offence; Careless use of firearm; Pointing a firearm; Possession of weapon for dangerous purposes; Carrying weapon while attending public meeting; Carrying concealed weapon; Unauthorised possession of firearm; Possession of firearm knowing its possession is unauthorised; Possession at unauthorised place; Unauthorised possession in motor vehicle; Possession of prohibited or restricted firearm with ammunition; Possession of weapon obtained by commission of offence; Breaking and entering to steal firearm; Robbery to steal firearm; Weapons trafficking; Possession for purpose of weapons trafficking; Transfer without authority; Making automatic firearm; Discharging firearm with intent; Causing bodily harm with intent — air gun or pistol	04
Mischief	Public mischief; Mischief	05
Sexual offences against	Sexual interference; Invitation to sexual touching; Sexual exploitation; Sexual exploitation of person with disability; Incest; Making child pornography; Parent or guardian procuring sexual activity; Householder permitting sexual	01

minors	activity; Corrupting children; Luring a child; Prostitution of person under eighteen	
Sexual offences against persons other than minors	Sexual exploitation of person with disability; Incest; Indecent acts; Sexual assault; Sexual assault with a weapon, threats to a third party or causing bodily harm; Aggravated sexual assault	03
Bawdy houses and prostitution	Keeping common bawdy house; Transporting person to bawdy-house; Procuring; Offence in relation to prostitution	05
Criminal negligence	Causing death by criminal negligence; Causing bodily harm by criminal negligence	04
Murder	Murder; Manslaughter; Infanticide; Attempt to commit murder; Accessory to murder	02
Administering noxious thing	Administering noxious thing	04
Traps	Traps likely to cause bodily harm	05
Operation of vehicles, vessels, or aircraft	Dangerous operation of motor vehicles, vessels and aircraft; Flight; Causing death by criminal negligence (street racing); Causing bodily harm by criminal negligence (street racing); Dangerous operation of motor vehicle while street racing; Failure to stop at scene of accident; Operation while Impaired; Operation while disqualified	06
Harassment and threats	Criminal harassment; Uttering threats; Intimidation	04
Assault	Assault; Assault with a weapon or causing bodily harm; Aggravated assault; Unlawfully causing bodily harm; Assaulting a peace officer	04
Confinement	Kidnapping; Trafficking in persons; Hostage taking; Abduction of person under sixteen; Abduction of person under fourteen; Abduction in contravention of custody order; Abduction;	03
Hate	Advocating genocide; Public incitement of hatred	03

propaganda		
Theft, forgery and fraud	Theft; Destroying documents of title; Fraudulent concealment; Theft and forgery of credit card; Theft from mail; Forgery; Uttering forged document; Drawing document without authority; Fraud; Using mails to defraud; Arson for fraudulent purpose	04
Robbery and extortion	Robbery; Extortion	03
Breaking and entering	Breaking and entering	04
Possession of property obtained by crime	Possession of property obtained by crime; Possession of property obtained by excise offences	04
Arson	Arson	04
Counterfeit money	Making counterfeit money; Uttering counterfeit money	04
Proceeds of crime	Laundering proceeds of excise offences; Laundering proceeds of crime	04
Participation in criminal organisation	Participation in criminal organisation; Commission of offence for criminal organisation; (instructing commission of offence for criminal organisation	03

Controlled Drug and Substances Act Offences	Description*	Restriction Code
Possession	Possession of substance	05
Trafficking	Trafficking in substance - Schedule I or II	03
	- Schedule III	04

	- Schedule IV	05
Importing and exporting	Importing and exporting - Schedule I or II	03
	- Schedule III	04
	- Schedule IV	05
Production	Production of substance - Schedule I or II (except marihuana)	04
	- Schedule III	04
	- Schedule IV	05

Highway Traffic Act Offences	Description*	Restriction Code
Driving prohibited while licence suspended	Driving prohibited while licence suspended	07
	Suspension while prohibited from driving	06
Rate of speed	Rate of speed – where the court has determined that the person convicted was driving at a rate of speed of 50 or more kilometres per hour greater than the speed limit	06
Careless driving	Careless driving	06
Fail to remain	Fail to remain at the scene of accident	06
Fail to stop	Fail to stop when signalled or requested by a police officer	06
Racing	Racing	06
Fail to stop	Fail to stop for a school bus	06

* The descriptions herein are inserted for convenience of reference and a guide to interpretation only and do not form part of the threshold.