



STAFF REPORT INFORMATION ONLY

Fairness Protocol for Removal of Street Vendors

Date:	October 21, 2009
To:	Licensing and Standards Committee
From:	Executive Director, Municipal Licensing & Standards
Wards:	All
Reference Number:	P:\2009\Cluster B\MLS\LS09023mls

SUMMARY

The purposes of this report are three-fold: to consider a fairness protocol for the removal of street vendors when the City requires them to vacate their permitted vending location; to determine the feasibility of establishing a threshold system similar to the taxi industry; and in consultation with the City Solicitor, to review the process for the City rescinding and not renewing street vending permits on an annual basis.

Additionally, staff was asked to report back on modifications to the moratorium in Wards 20, 27, and 28 so as to allow for the receipt of applications for the re-issuance of vending permits that are returned or not renewed by existing vendors in the area bounded by the moratorium, to maintain the number of existing vending locations in those Wards.

The City Solicitor, Technical Services, the Toronto Transit Commission (TTC), Transportation Services – Street Events Unit, as well as the Street Food Vendors’ Association was consulted in the preparation of this report.

Financial Impact

There are no financial impacts beyond what has already been approved in the current year’s budget.

DECISION HISTORY

At its meeting on June 10, 2009, the Licensing and Standards Committee referred a letter from Councillor Howard Moscoe to the Executive Director, Municipal Licensing and Standards for consideration (See item LS22.2 at <http://www.toronto.ca/legdocs/mmis/2009/ls/decisions/2009-06-10-ls22-dd.htm>). The Committee requested that the Executive Director consider a protocol for the removal of street vendors; the feasibility of establishing a threshold system similar to the taxi industry; and in consultation with the City Solicitor, review the process for the City rescinding and not renewing street vending permits on an annual basis.

Additionally, a Notice of Motion was adopted at the September 21, 2009 Licensing and Standards Committee meeting directing staff to report back on modifications to the moratorium in Wards 20, 27, and 28 so as to allow for the receipt of applications for the re-issuance of vending permits that are returned or not renewed by existing vendors in those Wards (see item LS23.6 at <http://www.toronto.ca/legdocs/mmis/2009/ls/decisions/2009-09-21-ls23-dd.htm>). And that the exceptions shall only apply on a going-forward basis to permits which become available after the date of Council's approval.

ISSUE BACKGROUND

Chapter 315, Street Vending, of the former City of Toronto allows street vendors who obtain permits to occupy public property and sell their products. Unlike business licences, a vendor permit is issued on the basis that it can be revoked at any time without cause and its issuance is contingent on the understanding of its temporary nature.

In 2002, City Council directed the Commissioner of Urban Development Services to accept no new vending applications after February 25, 2002 in Wards 20, 27, and 28 and that this moratorium continues until a new harmonized vending by-law has been adopted for the City of Toronto.

During the recent re-construction of Bloor Street, concerns were raised by the street vendors that there had not been any previous discussions with City Staff regarding their displacement, and that there appeared to be a lack of a notification process.

COMMENTS

Current Regulations and Practices

Vending is permitted under the Street Vending Bylaws of the former municipalities. While the physical criteria in these bylaws are the same, a moratorium has been imposed in Wards 20, 27 and 28, which prevents acceptance of new applications in these areas.

Vending permits enable permit holders to work within an area designated for vending. Products include food, jewellery, portraits, et cetera. The majority of vendors are located within the downtown core, and therefore, for the purposes of this discussion, bylaw references will be made to Chapter 315 of the former City of Toronto.

Permits are issued for one (1) year, and may be renewed annually if the permit holder is not in violation of the Bylaw. Permits are cancelled by recommendation to Community Council in instances whereby the permit holder is in violation of the Municipal Code or in breach of the agreement required under sec. 315-13A. In all cases, the vendor has the opportunity to appeal the recommendation at Community Council.

Street vendors are no different than business owners except that they operate their business on City property. However, a stipulation of this use is that it is not exclusive, and that at various times during the year, they may be asked to vacate for events that require street closures.

Once a permit to vend in a designated area has been approved for issuance, the applicant is required to enter into an agreement with the City regarding policies contained in the Vending Bylaw. Among other things, it states that, “The permit holder shall vacate the designated area when required to do so by a police officer or any person designated by the Commissioner, or for any reason including parades, special events or pedestrian, vehicular or public safety [sec. 315-13(11)].”

Similar criteria exist in Chapter 738, Street Food, Healthier, of the Municipal Code regarding displacement, and where appropriate, relocation of vendors.

Moratorium

At the March 4, 5, 6, 7 and 8, 2002, City Council meeting, the Commissioner of Urban Development Services was directed to accept no new street vending applications after February 25, 2002 in Wards 20, 27, and 28 and that this moratorium continue until a new harmonized Vending By-law has been adopted for the City of Toronto.

Since the Street Vending By-law has not yet been harmonized, consideration of a Notice of Motion to modify the moratorium so as to allow for the receipt of applications for the re-issuance of vending permits that are returned or not renewed by existing vendors in Wards 20, 27, and 28 should be directed to the Toronto-East York Community Council.

Request for a Notification Protocol and Requirement to Vacate

The temporary closure of City streets may be caused by a number of reasons, including emergency situations and repairs, special events requiring road closures, and scheduled road construction.

At a meeting on September 17, 2009 with Councillor Howard Moscoe, the Street Food Vendors’ Association presented 11 points they considered necessary for a protocol to be “fair” to street vendors. Of those, only four directly pertain to the notification, removal and relocation of street vendors.

The Street Food Vendors' Association has suggested that, for scheduled street closures, vendors be given 30-days notice of a requirement to vacate, be permitted to temporarily relocate to a location as near as possible to the original vending location, so as not to miss one-day's work, and be permitted to return to the original location once construction is complete.

When there is a planned street closure, city staff hand-deliver notices to affected residences and businesses, including street vendors, per their established divisional notification protocols. Municipal Licensing and Standards (ML&S) relies on other Divisions for notification of upcoming street closures. This notification may occur within weeks, days or even hours of a planned closure. Once ML&S receives notice of upcoming street closures that may impact street vendors, every attempt is made to notify the affected vendors.

Imposing a time frame for notification, as suggested by the Street Food Vendors' Association, requires internal and external stakeholders to adhere to time requirements so that ML&S may notify affected street vendors 30 days prior to a scheduled closure, and where possible find temporary vending locations. Consultation with Technical Services, TTC, and Transportation Services, Street Events suggests that there are instances where this may not be achievable.

Street Events

Street events may result in a full or partial street closure. The most common events of this nature are block parties, community festivals, and foot and bicycle races.

The process for requesting a street closure requires that the City be notified at least eight (8) weeks before the actual date of the event. However, this does not necessarily happen, as applications may be received within a week of the planned event. Part of the application requirement is proof of notification to the residents and businesses affected by the closure. This proof is supplied in the form of a distributed flyer or signed petition.

When processing an application, Transportation Services will circulate a notification to all divisions indicating that an application has been received, and to comment regarding divisional interests (such as street vendors), which may be affected by a closure.

Due to the number of applications received, complexity of the traffic management plan review, comments from external stakeholders (i.e. Toronto Police Service or Emergency Medical Services), the application may take longer than two weeks from when an application is received to the date the permit is issued to the event organizer. Under these circumstances, a 30-day notification period to the street vendors may not be possible as ML&S is only notified once a permit has been issued.

Transportation Services permit a street closure under a festival permit. Depending on the nature of the event, and if the vending location is within the street closure, ML&S does not normally request vendors to vacate. In many instances, Transportation Services has

“shuffled” a particular vending location within the closed portion of the street. Events like parades or races may require vendors to vacate, and as such notification is given.

When questioned about events where vendors had been asked to vacate within an event area only to have unlicensed vendors set up, Transportation Services have advised that they generally do not recommend the removal of a vendor. However, it is at the discretion of the event organizers to allow their sponsors to bring in other vendors.

In the past, organizers have approached Transportation Services, Street Events to request the removal of a vendor; they were denied, and advised to approach the vendor directly to reach a compromise.

Scheduled Construction

As part of the City’s Capital Works Program, road and boulevard improvements are scheduled throughout the summer months. In the majority of cases, construction work is co-ordinated to minimize disruptions to residences and businesses. Technical Services advise that an initial Public Notice is prepared, followed by a more detailed Construction Notice once construction is to begin. Public notices are hand-delivered by City Inspectors, when 90 per cent of the design has been completed. It is delivered to all parties directly affected by the proposed construction (including businesses, residences, street vendors et cetera) and copied to the Councillors of the affected Wards. Public Notice is given at least one and a half (1.5) and up to three (3) months before the start of construction.

When the construction contract has been awarded and a schedule for construction has been finalized (typically after the pre-construction meeting), Construction Notices are hand-delivered by City Inspectors to the same parties that received the initial Public Notice, and a copy is again sent to the affected Councillors. This notification is given between two (2) weeks and four (4) weeks before the construction starts.

For TTC-related construction that requires the closure of a street and sidewalk, the TTC notifies affected residences and businesses, and the local Councillor by issuing two notices. The first is sent at the time the project is tendered, and the second is sent one week prior to construction starting. Delivery is by hand, sometimes through a flyer delivery service, or at other times, by City Inspectors.

The TTC have also indicated that the time period between when a project is tendered and when construction may start varies. There have been times when this period has been less than one week.

Relocation of Displaced Vendors

Although it is not stipulated in the Bylaw that displaced vendors are to be relocated for any period of displacement, ML&S recognizes that for many vendors this is their livelihood. Therefore, if a street closure is for an extended period, attempts are made to

relocate them in as close proximity as possible to their original vending spot. Once construction is complete, vendors are returned to their designated vending locations.

When construction is scheduled for a defined period (for example, sidewalk repair lasting a couple of weeks), the provision in the by-law requiring the vendor to vacate is enforced, without temporary relocation. When construction is expected to occur over an extended period of time, ML&S will attempt to accommodate the displaced vendors by offering temporary alternative locations for the duration of the construction.

The process of assessing temporary locations may take upwards of four weeks to complete. Temporary locations are still required to comply with criteria as outlined in the Bylaw. For example, vending locations can not be located in front of an entrance or exit of a building, block the name, municipal number of display window of a building, must be a required distance from signalized intersections, etcetera. ML&S must also notify and receive written consent from abutting business owners/occupants and/or the local BIA.

Although the Street Food Vendors' Association's request to be temporarily relocated so as not to miss one-day's work seems reasonable, the mechanics of achieving this remains outside ML&S' control; specifically, when a special events application is received (less than 30-days' before the event), or how quickly construction begins once the project is tendered.

When construction involves alterations to the streetscape and business facades that result in the permitted designated vending area no longer meeting the requirements of the Bylaw, it may require the vendor to permanently vacate.

The Street Vending Bylaw has no provisions to allow ML&S to administratively relocate vendors permanently. Additionally, due to the imposed moratorium, no new vending applications would be accepted in Wards 20, 27, and 28. Not only does the moratorium not make it possible to accept new applications but also to relocate existing vendors, as technically a new application would be required since existing permits must be remitted and cancelled.

Currently, in order to maintain vending operations and not require the cancellation of existing permits, vendors may be permanently relocated if the physical criteria of Chapter 315 are met, and if approved by Community Council.

A review of Community Council decision documents found that since 2002, despite the imposed moratorium, there were seven incidences whereby a recommendation was made to permanently relocate vendors.

Should the Toronto-East York Community Council consider the motion to modify the moratorium to maintain the existing number of vending permits, a process needs to be established to determine how the permits will be allotted (for example, some type of

annual lottery), in order to prevent the sale/transfer of permits directly from the vendor giving up the permit to the vendor buying the business.

Business Licensing Thresholds

Business licensing thresholds refer to the issuance and renewals of business licences. Thresholds have been developed and outlined in the Municipal Code to provide clear guidelines for obtaining and maintaining a licence under Chapter 545, Licensing. Thresholds provide comprehensive and consistent criteria for issuing, revoking and placing conditions on licences. It is an assessment process of whether to refuse or approve an application, in the context of a history of offences, based on the types of offences, the number and/or frequency of offences and the time of the conviction.

Thresholds are also subject to an appeal process by the licence applicant. A refusal to issue or renew a licence by ML&S may, on petition by the applicant, be heard before the Licensing Tribunal, which will adjudicate the matter.

All businesses licensed by the City of Toronto are subject to Appendix K to Chapter 545, Business Licensing Thresholds. This includes all boulevard and curb lane vendors selling food. Currently there are 378 permits issued by ML&S; 198 of those permit holders also hold a business licence under Chapter 545, Licensing of the Municipal Code, and are thus subject to Appendix K – Business Thresholds.

A review of Community Council decision documents since 2002, showed no recommendations to Community Council to revoke a vending permit due to a revocation or suspension of a business licence. During this same period, there were no recommendations to revoke the permits of non-licensed vendors.

Given the volume of issues before Community Council and the uniqueness of each case, establishing a secondary threshold system of accountability in order to capture the remaining permit holders (such as, chalk artists, buskers, and portrait artists who are not licensed by the City of Toronto) seems unnecessary.

Conclusions

Street vending permit holders, upon issuance of the permit enter into an agreement with the City regarding policies that govern their use of the City property. Specifically, permit holders are expected to vacate their designated vending space for any reason, when required to do so.

The Street Food Vendors' Association has requested that vendors receive 30-days notice if required to vacate their vending locations, be temporarily relocated, and returned to their original locations once the street is reopened. However, depending on the time from receipt of notification and the street closure, and when ML&S is notified, the ability to successfully relocate street vendors in order that they do not miss one-day's work is difficult. Additionally, should the streetscape be altered in that way that the original

designated vending location no longer meets the requirements in Chapter 315, vendors may be required to vacate permanently.

Should the existing established processes be deemed inadequate, and a formalized process desired, consideration should be given to developing (in consultation with the appropriate divisions), a protocol for notification and relocation of street vendors; and Chapter 315, Street Vending be amended to include such a process.

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