



STAFF REPORT ACTION REQUIRED

Conditions Attached to Liquor Licences

Date:	March 25, 2014
To:	City Council
From:	City Solicitor
Wards:	City-wide
Reference Number:	

SUMMARY

For a number of years, the City of Toronto has objected to numerous liquor licence applications in order to secure conditions to be attached to the licence. This was usually done with the consent of the owner and the approval of the Registrar of the Alcohol and Gaming Commission of Ontario ("AGCO"). Occasionally, conditions were imposed by the AGCO tribunal or the Licence Appeal Tribunal ("LAT"), after a hearing.

We have recently been informed by the Registrar's legal counsel that many of the conditions frequently requested by the City will in future no longer be approved by the Registrar and will not be attached to liquor licences. In the first instance, the Registrar has the sole discretion to approve or not approve liquor licence conditions.

RECOMMENDATIONS

The City Solicitor recommends that:

1. Members of Council may want to inform residents that the Registrar of the Alcohol and Gaming Commission of Ontario ("AGCO") will no longer approve conditions to be attached to liquor licences that do not directly relate to the administration and enforcement of the *Liquor Licence Act* and its regulations.
2. Council direct that Municipal Licensing and Standards ("MLS") review the AGCO's new approach to liquor licence conditions and report back to Council with opportunities and options to deal with problems and impacts arising from the operation of licensed premises.

3. Council direct MLS to continue to advance joint enforcement partnerships and information sharing to monitor locations that are subject to complaints and enforce existing City regulations, where necessary.

Financial Impact

The recommendations may have financial impacts beyond what has already been approved in the current year's budget.

COMMENTS

The Registrar of the AGCO, through his legal counsel, has advised City staff that a number of conditions that ward councillors have historically sought to impose on liquor licences will no longer be approved nor enforced by the AGCO. Conditions to be attached to individual licences arose out of consultations between the ward councillor and residents in the vicinity of the premises. For a majority of liquor licence applications, conditions were attached to the licence by written consent of the applicant and the City, which consent was filed with the AGCO.

The purpose of this report is to inform members of Council of the change in direction of the AGCO with respect to conditions to be attached to liquor licences and to seek Council's authorization for MLS to look into any impacts the elimination of these conditions may have on residential neighbourhoods in the City, and to bring back to Council, options on how to deal with regulating the impacts caused by licensed premises.

Conditions attached to liquor licences are an effective way to try to control the impacts arising from the operation of licensed premises. Conditions requested by the City were the result of collaboration between the Ward Councillor, residents and the City Solicitor. Typical conditions deal with noise, security, lighting, litter and patio regulations. Over the years, conditions began to evolve from site specific to generic. That is to say, conditions which were drafted to deal with a large night club, found their way into premises which were of a much smaller scale and function, for example, a 30-seat restaurant or a fast food establishment.

Over time, conditions were agreed to between the applicant and residents which had nothing to do with the sale or service of alcohol. The following are examples of such conditions:

1. The applicant shall hold a valid business licence, issued by the City of Toronto, to operate a business of the class "restaurant."
2. The maximum size of any space made available as a dance floor shall at all times comply with the governing City by-law for restaurants.
3. The licensee shall ensure that a seat is available for a majority of the approved occupancy, as specified on the liquor licence, during all hours of operation.
4. There shall be no cover charge except for corporate, charity or special events.

AGCO lawyers recently advised solicitors for the City that the Registrar will no longer accept such conditions and will not attach them to licences nor will the AGCO enforce any such conditions. Attached as Attachment 1 is an email from Tamara Brooks, Deputy Director, Legal Services for the AGCO, wherein she sets out the Registrar's position. Ms Brooks has advised us that liquor regulation is increasingly directed towards risk-based and compliance-based assessments and moving away from enforcement. As well, Ms Brooks has advised us in meetings that we had with her that matters within the jurisdiction of the City's Municipal Code and zoning by-law must be the responsibility of the City and not the AGCO. The AGCO's mandate deals with the sale and service of alcohol and Ms Brooks has advised that the AGCO will not approve any conditions that do not fall within its mandate

However, there are a number of conditions that the AGCO is prepared to accept on a liquor licence, provided the City can demonstrate the validity of such condition on a site by site basis. Examples of such conditions are the hours of operation on a patio; not permitting amplified music in outdoor areas; the installation of security cameras and ensuring that garbage is kept in an enclosed and secure container.

Currently, MLS has the authority and jurisdiction to deal with noise complaints, litter complaints, property standard complaints and business licence issues which may arise out of the activities of licensed premises and will continue to so.

The City must determine if there are any additional reasonable and effective options to dealing with licensed premises. MLS will undertake this investigation.

CONTACT

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SIGNATURE

Anna Kinastowski, City Solicitor

ATTACHMENTS

Attachment 1: email from T. Brooks

Attachment 1

>>> On 14-Mar-14 at 12:48 PM, "Brooks, Tamara (AGCO)" <Tamara.Brooks@agco.ca> wrote:

Thank you for meeting with us last week. As we discussed, the modernization of liquor regulation is increasingly directed towards risk-based and compliance-based outcomes while moving away from the enforcement of prescriptive rules. At the same time, the regulation of liquor sales, including licensing, is to be directed to achieving the objective of licence holder compliance with the Liquor Licence Act. Therefore, the Registrar will not add conditions to a liquor licence that require a prescriptive enforcement approach and, in the case of conditions that fall within a Municipal inspection and enforcement mandate, are not directed at compliance with the Liquor Licence Act. The responsibility for inspection and enforcement of matters relating to interior noise and business licensing standards that require compliance with Municipal by-laws and regulations must be left, in our view, to the resources and expertise of the City of Toronto. This includes, but is not limited to, conditions that require an establishment to close windows and doors while amplified music is played. Similarly, conditions requiring a licensed establishment to be compliant with the standards of the business licence such as holding a particular class of business licence and operating within that class will no longer attach to a liquor sales licence.

Also consistent with this approach, the AGCO is not able to enforce a condition that requires a licence holder to advise the local Councillor of a change in management or an application to remove conditions. These conditions cannot, therefore, attach to a liquor licence. As we discussed, the Licence Appeal Tribunal has the authority to order notification to the public of an application to remove conditions. Any concerns you may have with that process should be raised with the LAT. While we appreciate that residents may anticipate issues should there be new operators or a change in business model, conditions cannot attach to a liquor licence on the basis of speculation. The Registrar evaluates the associated risks with all licensed establishments and addresses concerns on an ongoing basis through the regulatory regime under the Liquor Licence Act.

Best regards,

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