



STAFF REPORT INFORMATION ONLY

Municipal Interests in Liquor Licensing – Recent Actions Regarding Conditions Placed on New Licences

Date:	February 5, 2015
To:	City Council
From:	City Solicitor and Executive Director, Municipal Licensing and Standards
Wards:	All
Reference Number:	P:\2015\Cluster B\MLS\CC15004

SUMMARY

At its meeting of January 21, 2015, Licensing and Standards Committee requested the Executive Director, Municipal Licensing and Standards and the City Solicitor make a presentation and report to City Council at its meeting of February 10, 2015 on recent actions taken by the Alcohol and Gaming Commission of Ontario (“AGCO”) regarding conditions on new liquor licences.

Municipal Licensing and Standards and Legal Services continue to work with the AGCO to achieve positive outcomes in the liquor licence application process that address neighbourhood and community concerns. With the creation of the Steering Committee, Regulatory Working Group and Hospitality Industry Working Group, recommendations that strengthen City by-laws and improve enforcement of these by-laws with respect to licensed establishments will be reported to City Council through the Licensing and Standards Committee.

Financial Impact

There is no impact beyond what has already been approved in the current year’s budget.

DECISION HISTORY

At its meeting of January 21, 2015, Licensing and Standards Committee amended the report headed "Municipal Interests in Liquor Licensing" and requested the Executive Director, Municipal Licensing and Standards and the City Solicitor make a presentation and submit a report to City Council at its meeting on February 10, 2015, on recent actions taken by the Alcohol and Gaming Commission of Ontario regarding conditions on new liquor licences.

ISSUE BACKGROUND

The City Solicitor reported to Council, in a report dated March 25, 2014, on a departure from the previous practice of the Alcohol and Gaming Commission of Ontario ("AGCO") with respect to conditions to be placed on liquor licences. The AGCO refused to impose conditions which, in its view, would be appropriately dealt with through municipal bylaws and enforcement, and were therefore outside the purpose and mandate of the *Liquor Licence Act* and the AGCO's regulatory mandate.

As a result of the action taken by City Council in response, to object to all liquor licence applications, and subsequent meetings between City representatives, Provincial representatives and staff, an understanding was reached by all parties to permit the continued imposition of conditions, and the City Council objection criteria was subsequently rescinded.

By letter dated August 11, 2014, the AGCO confirmed that it continued to hold the view that liquor licence conditions should be "related to specific and identifiable risks having regard to the location and type of establishment" and also "be enforceable so as not to raise unrealistic expectations with the community." The AGCO also confirmed that conditions previously imposed on liquor licences continued to be in force.

Since this time, a number of generic conditions unrelated to the sale or service of alcohol, have been rejected. The City was informed that the AGCO is prepared to accept certain conditions on a liquor licence where the City or other interested parties can demonstrate that the conditions are valid and reasonably connected to the sale or service of alcohol at the site in question. Examples of some of these conditions are: hours of operation on a patio; not permitting amplified music in outdoor areas; installation of security cameras and ensuring that a licensee provides a contact number for residents to register complaints. A connection must be made between the specific application and the need for these conditions before the conditions will be imposed on a liquor licence. The AGCO will not impose any other conditions even where members of the public and the applicant have come to an agreement on those conditions.

This report discusses the recent developments in relation to conditions attached to liquor licences during the application process and the efforts made to strengthen cooperation between the City and the AGCO to improve enforcement against problem locations.

COMMENTS

Recent Developments with respect to Conditions attached to Liquor Licences

Since the City received the August 11, 2014 communication from the AGCO, the City Solicitor has continued to follow City Council's instructions to oppose specific applications for liquor licences on the basis of public interest. The City has proposed fewer conditions than in previous matters and has sought to link the proposed conditions

to specific and identifiable risks specific to the particular location.

While very few matters have been dealt with since August 2014, the City has only been successful in ensuring that conditions are added to require the posting of signage inside an establishment identifying contact information for complaints and issues that may arise. However, the City has not been successful in its requests that conditions requiring the closure of windows and doors to prevent the indoor projection of amplified sound or music to the outside be imposed on liquor licences. The City continues to assert its view that this condition is "related to specific and identifiable risks, having regard to the location and type of establishment", and is similar to AGCO Board approved conditions that prohibit the use of "amplified music or other forms of entertainment in outdoor areas or ... directed towards outdoor areas". The City will continue to explore solutions with the AGCO to address this issue.

At this time, it is difficult to draw general conclusions because few cases have been decided since August 11, 2014 and each case is dealt with based on its specific facts.

The City and the AGCO continue to discuss these issues through their joint steering committee and working groups. The steering committee and working groups will review the current processes and explore opportunities to address the public interest concerns. In the interim, the AGCO has proposed a method by which these types of municipal concerns can be addressed.

The AGCO has offered to attach to a liquor licence any agreement made between the City and the applicant for the liquor licence ("municipal consent agreement"). The City would negotiate and obtain agreement on conditions with the liquor licence applicant. This agreement would consist of reasonable conditions that are enforceable through municipal bylaws.

The municipal consent agreement would be referenced on the AGCO liquor licence as a condition, indicating that the Licensee has agreed to terms and conditions entered into with the City of Toronto. The terms and conditions of the municipal consent agreement would be entered into the AGCO licensing and compliance system, and be capable of being referenced by AGCO Inspectors.

While the AGCO inspectors would not specifically set out to inspect for compliance with this municipal consent agreement, they would advise the City through the Municipal Licensing and Standards Division of non-compliance with these municipal conditions. The information in respect to convictions under municipal bylaws would be shared through existing protocols with the AGCO, would be entered into their system, and would be considered in the assessment of an appropriate regulatory response.

In the absence of a municipal consent agreement, the City will continue to avail itself of the current objection process, including appearances at the License Appeal Tribunal ("LAT")

This approach and others will continue to be discussed through the Steering Committee and Regulatory Working Group as they meet to identify opportunities address community concerns and improved enforcement related to licensed establishments.

Increased cooperation between the City and the AGCO to address problem locations

Municipal Licensing and Standards (ML&S) and Legal Services continue to engage the AGCO to achieve positive outcomes in the liquor licence application process to ensure that the concerns of members of the public are addressed. Furthermore, the City and the AGCO have worked together to strengthen cooperation between enforcement officers to ensure that problem locations are addressed using the tools available to the City, the AGCO and the Toronto Police Service.

These parties meet on a regular basis, both operationally and at senior levels, to discuss specific problem properties, and broader public interest initiatives and impacts. The focus of these meetings is to raise concerns and discuss resolutions that are satisfactory to both the City and the AGCO, while respecting the mandate and authorities of each regulatory authority.

The ongoing partnership of the Municipal Licensing and Standards division with the AGCO and Toronto Police Service, coupled with the development of the Steering Committee, Regulatory Working Group and Hospitality Working Group and associated work plans, will support City Council's direction to address community nuisance concerns with these licensed establishments.

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SIGNATURE

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ATTACHMENT

Attachment 1: Letter from the Alcohol and Gaming Commission of Ontario