

**Audit Committee Meeting**

**October 27, 2017**

**Agenda Items AU10.2, AU10.3, AU10.4**

# **A Review of Municipal Licensing and Standards Division's Management of Business Licences**

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**Auditor General's Office**  
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# Background

- The Municipal Licensing and Standards Division (MLS) is responsible for regulating a myriad of businesses within the City
- Purpose of licensing:
  - ✓ Public health and safety
  - ✓ Consumer protection
  - ✓ Nuisance control

# Background

Audit objective:

To assess the effectiveness and efficiency of MLS's licensing functions and enforcement of the By-law

- Analysed 2015 and 2016 licensing data
- MLS issued and renewed over 87,000 licences in 2016
- \$28.9 million from licence and permit fee revenue in 2016

# Three audit reports:



# Areas Where MLS Does Well

- Licence application approval process
  - ✓ Organized and consistently implemented (including all forms being properly submitted)
  - ✓ Conduct clearance inspections for new licence applications
  - ✓ Staff are, in general, well-versed in By-law requirements

# **Part One: Licence Issuance, Inspection and Complaint Investigation Functions**

# Businesses Operating Without a Valid Licence

- Website search - 18 businesses were operating without valid or up-to-date licences
  - Eleven (11) had MLS enforcement records
  - Unlicensed businesses continued to operate
  - No Standard Operating Procedure (SOP) to make sure consistent follow-up of unlicensed businesses

Recommend – review enforcement framework and strengthen efforts to ensure compliance

# Proactive Inspection

- 30% of eating establishments, food stores and hair/nail salons had no inspections for 3 years or more
- By-law officers decide when and how often they should inspect businesses
  - No requirement for inspection frequency
  - No alert in MLS's system to flag businesses that haven't been inspected for some time
  - Some businesses had more than 10 inspections in a year while others had none
- Recommend – risk-based approach for developing inspection frequency; ongoing monitoring to ensure consistent and equitable inspection program



# Investigation Requests and Complaints

- Performance standards for response time exist, but are not tracked
- Average: 53 days to close an investigation request, ranging from 0 to 627 days
- Investigation hours varied significantly for same type and outcome
  - 0.5 hour vs. 6 hours
- Significant workload differences between officers
  - Average: 105 investigations; 5 officers conducted 400
  - Central district investigated twice as many complaints as West and East districts

Recommend – Track, review and monitor efficiency of complaints handling and staff time spent

# It all begins with a clear bylaw



# **Part Two: MLS's Licensing and Enforcement Activities Regarding Holistic Centres**

# Differences Between a Holistic Centre and a Body-rub Parlour Licence

Holistic Licence	Body-rub Parlour Licence
“...for therapeutic and wellness purposes”	“includes the ... touching, or stimulating, by any means, of a person’s body...”
410 Licensed centres (no cap)	Capped at 25 body-rub parlour licences
Licence fee: \$270 new licence \$148 renewal	Licence fee: \$13,102 new licence \$12,660 renewal
No health evaluation requirement	Workers are subject to health evaluations to ensure they are free from communicable diseases and medically fit
May lock treatment room doors	Not allowed to lock doors to any rooms

## A Considerable Number of Licensed Holistic Centres Appeared to be Offering Unauthorized Services

- Of 410 licensed holistic centres
  - Website searches - 107 appeared to be offering unauthorized services
  - MLS has its own list of over 100 problematic centres
- Advertised with sexually explicit photographs and had suggestive descriptions of services such as erotic massage
- 37 of the 107 centres were charged by MLS in 2015 and 2016; total of 117 charges for various By-law violations
  - All 37 continued to operate under a holistic licence

# Professional Holistic Associations (PHA)

- By-law requires all holistic practitioners to be a member of one of the City-approved PHAs
  - 37 City-approved PHAs
  - Added to the By-law in 2005 following a staff report
- Intent was to rely on accredited PHAs to govern members to ensure integrity and honesty of services
- Charge membership fees. For example, a large PHA can collect over \$250,000 from initial fees, and \$100,000 from annual renewal fees

# Legitimacy of the 10 Largest PHAs is Questionable

- Many appear to only exist on paper - one address was for an abandoned building, another was for a cottage, and one had a P.O. Box.
  
- Concerns about PHA Directors
  - 1 PHA's director was convicted of an “assault”, and convicted for operating an unlicensed body-rub parlour
  - 2 other PHA directors were also convicted for operating unlicensed body-rub parlours
  - Another PHA's director was being prosecuted for illegally practising massage therapy

# The By-law does not Give MLS the Tools to Regulate PHAs

- No authority to conduct background checks during PHA approval process
- No By-law provision to allow MLS to conduct inspections of PHAs after they have been approved
- No By-law provision enabling MLS to revoke the approval of a PHA or to de-recognize PHA members even when a PHA is found to be problematic



# MLS's 2014 Review and Industry Consultation

- *“A review of MLS records indicate that the majority of the individuals who were issued a holistic centre and/or a holistic practitioner’s licence by the City are offering body rub services”*
- A staff report was to be submitted to the Licensing and Standards Committee on how to better manage PHAs

Recommend – to re-assess the merits and practicality of relying upon PHAs as governing bodies; to undertake a comprehensive review of the existing By-law and legislative framework

# **Part Three: Licensed Eating Establishments Potentially Operating as Unlicensed Nightclub**

# Difference Between Licensed Eating Establishments and Nightclubs

Eating Establishment	Nightclub
7,938 licensed eating establishments	39 licensed nightclubs
Licence fee: \$481 new licence \$290 renewal	Licence fee: \$468 new licence \$282 renewal
Not subject to the same rigorous requirements as nightclubs	<ul style="list-style-type: none"><li>❖ Noise and crowd control plans</li><li>❖ 1 security guard for every 100 patrons</li><li>❖ Metal detector at entrance</li><li>❖ \$2 million comprehensive insurance</li><li>❖ Located on the first storey</li><li>❖ Only 1 nightclub in a building</li><li>❖ Restricted number in certain areas</li></ul>

# Eating Establishments Potentially Operating as Unlicensed Nightclubs

- A simple website search - 15 licensed eating establishments appeared to be operating as unlicensed nightclubs; 10 in downtown Toronto
- Of the 15, MLS investigated 10 and laid various charges in 2016, including 4 tickets and 2 summons for operating illegally as nightclubs
- All 10 continued to operate as licensed eating establishments
- 43 eating establishments in Central district identified for potentially operating as nightclubs

# By-law Limitations Leading to Enforcement Challenges

- Key words in By-law definition of a nightclub: "seating is not provided for the majority of the patrons"



For example, if there are 100 patrons:

49 seats = nightclub

51 seats = not a nightclub

- Patrons can come and go; impractical for MLS officers to count the exact number of patrons on site
- Counting the number of seats can be just as challenging; some places use benches instead of individual chairs

# Application Processing and Subsequent Enforcement Process Need Improvement

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## Eating Establishment (B71) and Entertainment Establishment / Nightclub (B97) Applications

1) Does your establishment have a liquor licence?

Yes  No

2) Have you applied for a liquor licence?

Yes  No

3) If "Yes" - what is the seating capacity as per the liquor licence?

Number: \_\_\_\_\_

4) What is the occupancy load? 270

5) What are the hours of operation?

Monday - Thursday: 4pm to 3am

Friday: 4pm to 3am

Saturday: 4pm to 3am

Sunday: 4pm to 3am

6) Do you have a dance floor?

Yes  No

7) If "Yes", what is the square footage? 144 200 sq. ft.

8) Is Seating removed to accommodate a dance floor?

Yes  No

9) If "Yes" how many seats are removed?

10) Do you have a DJ or any live entertainment anytime the business is operating?

Yes  No

11) If so, when / which days / nights?

Monday: > depends on event  
 Tuesday: \_\_\_\_\_  
 Wednesday: yes  
 Thursday: yes  
 Friday: yes  
 Saturday: yes  
 Sunday: yes

12) Do you have a patio?

Yes  No

13) If so, is it on City property or private property?

City Property  Private Property

Date: \_\_\_\_\_  
 Clients Signature: \_\_\_\_\_  
 Application # \_\_\_\_\_

# Reassess the Existing Licensing Classification of Eating Establishments

- Existing By-law classifications and requirements were established years ago
- Need to recognize significant changes to the restaurant industry and the City's demographics
- Balance the needs of promoting business growth with community needs and consumer protection

Recommend – a broader review of the By-law provisions and classification of eating establishments and nightclubs

# Overarching Themes

- ❖ Ensuring City Bylaws are clear, specific and enforceable
  
- ❖ Transformation of the Licensing Program
  - MLS is faced with a large array of complex and emerging issues
  - 168 directives from City Council remain outstanding
  - MLS can leverage the vast experience and expertise of the City's new Chief Transformation Officer; risk-based, effective and efficient ways of delivering services, enhance collaborations with other divisions, and use of modern technologies