

MOTION WITHOUT NOTICE**176 Cherry Street - Liquor Licence Application for
1299484 Ontario Ltd. - Golf Driving Range at Polson Pier**

Moved by: Councillor Fletcher

Seconded by: Councillor McConnell

SUMMARY:

1299484 Ontario Ltd. (the “Applicant”) is the occupant of an establishment located at 176 Cherry Street operating under the name Golf Driving Range at Polson Pier (the “Golf Driving Range”), and they have submitted an application for a liquor sales licence to the Alcohol and Gaming Commission of Ontario (“AGCO”) to permit an indoor licenced area for approximately 80 patrons, and an outdoor licenced area for approximately 375 patrons. The deadline for the receipt of objections is May 4, 2008.

The current application consists of a golf hut and connecting patio located on a small portion of the Docks by Cherry (the “Docks”) lands at 176 Cherry Street. From 1996 to July 2006, 1132165 Ontario Limited operated the Docks with an indoor licenced area for approximately 3,000 patrons, and an outdoor licenced area for approximately 7,000 patrons. Between 1996 and June 2004, City Councillors received complaints from residents regarding the poor operation of the Docks and misconduct of its patrons and were advised by Municipal Licensing and Standards of certain violations by the Docks of the Municipal Code and applicable Zoning By-laws. In response, City Council adopted Notice of Motion J(34) on June 24, 2004, instructing the City Solicitor and Staff to oppose a renewal and expansion of the Docks’ liquor licence because the past and present conduct of the persons involved in the operations of the Docks afforded reasonable grounds for belief that the Docks would not carry on business in accordance with the law and integrity and honesty, and the continued operation and any expansion of the Docks was not in the public interest.

A twenty-six day hearing was held at the AGCO between February 17, 2005 and November 24, 2005 and the AGCO heard evidence from several residents of the Toronto Islands regarding noise impacts from the Docks on their lives, and they heard evidence from the City regarding repeated noise by-law violations and several noise by-law charges that are still before the Courts. At least one noise by-law violation resulted from an outdoor concert event at the driving range/drive in movie theatre adjacent to the proposed licenced area for the current application. In a decision issued on July 24, 2006, the AGCO ordered the revocation of the liquor licence of the Docks finding it was not in the public interest having regards to the needs and wishes of the residents for the Docks to retain its liquor licence.

On July 28, 2006 the Divisional Court issued an order staying the order of the AGCO that revoked the Docks' liquor licence pending an application for leave to appeal the AGCO decision. On March 28, 2007 the Divisional Court set aside the order of the AGCO and remitted the matter back to the AGCO to conduct a new hearing that would include fresh evidence obtained after the July 24, 2006 AGCO revocation order. The AGCO and the City have sought leave to appeal the March 28, 2007 order of the Divisional Court to the Ontario Court of Appeal, and a motion for leave to the Court of Appeal is scheduled to be heard on June 20, 2008.

We understand that the principal owner of the corporate applicant is the same principal owner of the Docks. Given the history of noise impact on island residents from the Docks as determined by the AGCO, and the previous violations of the City's noise by-law, the granting of a licence to sell liquor at the Golf Driving Range at 176 Cherry Street would not be in the public interest. The Applicant has proposed to have six conditions attached to the licence as found in Attachment 1, however, there is a mistrust with the Applicant by island residents and they believe conditions will not be adhered to. Conditions were not followed by the Docks, and as noted by the AGCO in the 2006 revocation decision rendered by former Chair Barber and Member McQuaid "the historical evidence strongly suggests that self-regulation by the Docks is not effective". Unless enforceable conditions are placed on the licence that would prevent noise impacts on residents of the City and there was a guarantee that the conditions would be adhered to by the Applicant, it is not in the public interest to grant the proposed liquor licence. For the recent liquor licence application for Polson Pier at 11 Polson Street the licensee, island residents, and the City entered into settlement discussions and an agreement was reached with regards to conditions on the licence and a method to secure that the conditions would be adhered to. The licence for 11 Polson Street was issued without the need for a hearing.

RECOMMENDATIONS:

1. City Council direct the City Clerk to advise the Registrar of the AGCO that the issuance of a liquor licence for the Golf Driving Range at Polson Pier, 176 Cherry Street, as proposed, is not in the public interest having regard to the needs and wishes of the residents and request that the Registrar issue a Proposal to Review the liquor licence application in order to permit public participation in the process.
2. City Council request the AGCO to provide the City of Toronto with an opportunity to participate in any proceedings with respect to licencing applications for the Golf Driving Range at Polson Pier.
3. City Council direct the City Solicitor along with the local Councillors from Wards 28 and 30 to enter into settlement discussions with the Applicant and residents of the Toronto Islands in an attempt to secure appropriate and enforceable conditions on the licence that would prevent noise impacts on City residents and encourage compliance with all liquor licence and City regulations.
4. City Council authorize the City Solicitor and any necessary staff to attend all proceedings before the AGCO in this matter and direct the City Solicitor to take all necessary actions so as to give effect to this Motion.

April 28, 2008

Attachment

According to Chapter 27, Council Procedures:

Fiscal Impact Statement provided	
Should have Fiscal Impact Statement prior to debate	*
Requires two-thirds to waive requirement if Council wishes to debate	
Is before Council for debate	(√)
Chair agrees that the Motion Recommendations are Urgent - AGCO	(√)

* Deputy City Manager and Chief Financial Officer to advise.

Attachment 1

Conditions Proposed by the Applicant

The liquor licence (“**Licence**”) of 1299484 Ontario Ltd. (“**Ontario**”) for the premises at 176 Cherry Street in the City of Toronto (the “**Premises**”) is subject to the following conditions:

1. No sound amplified by mechanical, electronic or other means (“**Sound**”) emanating from the Premises shall be audible on Ward’s Island or Algonquin Island (the “**Community**”) at any time. “Audible” shall mean audible to the human ear of any person, unassisted by any mechanical, electronic or other means.
2. Ontario shall provide to the Toronto Island Noise Committee (“**TINC**”) a telephone number for the General Manager of Ontario, or his designate to be answered by a live individual having authority to take or direct all reasonable steps to comply with the terms of this Schedule A at all times during which Ontario is open for business.
3. There shall be no amplified outdoor music, disc jockey, amplified voices or loudspeaker at the outdoor facilities at the Premises between the hours of 11:00pm and 11:00am except for low level amplification of the audio from the drive-in movies on Friday, Saturday and Sunday evening only.
4. There shall be no outdoor musical events, including concerts, taking place at the outdoor facilities at the Premises.
5. All operations on the Premises shall comply with City of Toronto Municipal Code section 591-4 and with Section 46 of Regulation 719 to the Act.
6. TINC and the City of Toronto shall receive timely notice of any application to transfer or vary the terms of the Licence.