



STAFF REPORT ACTION REQUIRED

Economic Impact of Proposed Amendments to Toronto Municipal Code Chapter 629, Property Standards- Washrooms within Mercantile Occupancies

Date:	April 21, 2009
To:	Licensing and Standards Committee
From:	General Manager of Economic Development, Culture and Tourism
Wards:	All Wards
Reference Number:	

SUMMARY

The proposed by-law amendments will have several types of economic impacts, but generally these impacts are expected to be modest. Most retailers already comply with the spirit of the proposed changes to the Property Standards By-law; however, some unknown number of retailers do not provide washrooms for customer use.

The proposed changes to the by-law will have the effect of creating a public perception that they have a “right” to use a washroom in a store, where most residents currently view this as a privilege. In addition, the proposed signage provisions will have an impact on some retailers. The recommendation in this report is designed to mitigate the impact of the signage provisions.

Consultations have been conducted with industry stakeholders to get a better sense of these impacts. Generating a reliable monetary estimate of potential impacts would, however, require door-to-door sampling of many retail establishments, and would be cost and time prohibitive.

This report was drafted in consultation with Municipal Licensing and Standards staff.

RECOMMENDATIONS

The General Manager of Economic Development, Culture and Tourism recommends that:

1. the signage provisions in the draft by-law be amended to add the words “or such other signage that incorporates the universal male and female symbols for washrooms and is to the satisfaction of the Executive Director, Municipal Licensing and Standards”

Financial Impact

There are no financial implications resulting from the adoption of this report.

DECISION HISTORY

At its meeting of July 2, 2008 the Licensing & Standards Committee requested the Executive Director, Municipal Licensing and Standards to draft an amendment to the City of Toronto Property Standards By-law that would enable Municipal Licensing and Standards officers to enforce the Building Code requirements for mercantile occupancies to provide washrooms to which customers have access, and to include requirements for appropriate signage.

The Executive Director, Municipal Licensing and Standards produced a report, which is available at <http://www.toronto.ca/legdocs/mmis/2008/ls/bgrd/backgroundfile-16051.pdf>. The report was adopted by the Licensing and Standards Committee on October 15, 2008. The Licensing and Standards Committee also recommended that the provisions in the bylaw shall apply only to mercantile establishments over 300 square metres (3,230 square feet). Based on these committee directives, Municipal Licensing and Standards created a draft by-law, that is different from the draft by-law attached to the September 30, 2008 report in two ways. The revised by-law includes provisions to exempt establishments under 300 square metres from the signage requirements in the by-law and exempts establishments where only one attendant is present.

Considered at City Council on October 29 and 30, 2008, this item was referred back to the General Manager, Economic Development, Culture and Tourism, for a report to the Licensing and Standards Committee on the economic impacts on businesses that would have to comply with the proposed by-law amendments.

<http://www.toronto.ca/legdocs/mmis/2008/ls/reports/2008-10-15-ls16-cr.pdf>

ISSUE BACKGROUND

The Ontario Building Code regulates certain matters related to washrooms, such as the number of toilets, based on occupancy type and load. However, upon completion of construction and occupancy, there is currently no method to ensure that the required facilities are provided and maintained on an ongoing basis. As a result, some retail stores do not provide customers access to washroom facilities and many customers are not aware that these requirements exist.

The report from the Executive Director, Municipal Licensing and Standards (September 30, 2008), and the draft by-law that incorporates recommendations from the Municipal Licensing and Standards committee, address these concerns by amending the Property Standards By-law to require store owners to make available the washroom facilities, required by the Building Code, to both the employees and the customers of the store. The by-law also sets out signage requirements, at both the entrance to the washroom(s) and one or more directional signs at the customer service counter.

COMMENTS

The proposed by-law amendments will have several types of economic impacts, which are generally expected to be modest. Most retailers already comply with the spirit of the proposed changes to the Property Standards By-law; however, some unknown number does not provide washrooms for customer use. The proposed changes to the by-law will cause retailers, not already in compliance, to incur additional maintenance and monitoring costs. There will be a subtle shift in public perceptions regarding their “rights” to use a washroom in a store. In addition, the proposed signage provisions will have some impacts. The recommendation in this report is designed to mitigate the impact of the signage provisions.

What the By-law does not do

During the consultations that were conducted with industry stakeholders, it became apparent that several misperceptions exist about the proposed by-law amendment. Therefore, it is necessary to first provide some clarification about a few aspects of the proposed changes to the Property Standards By-law.

The proposed amendments to the by-law do not require stores to provide any additional washroom facilities than those which are required by the Building Code. In addition, stores that were built and renovated before the Building Code came into effect in 1975 will continue to be exempt from the proposed amendments to the by-law.

The provisions in the by-law apply only to the “public” in the context of a mercantile establishment. This means that a retailer could choose to make washrooms only available to their customers if he/she so chose. The definition of “customer” is for the retailers to

define. Anyone they choose to exclude from using the property and the manner in which they do so is governed by the Trespass to Property Act.

The proposed by-law does not mean that washrooms have to be unlocked. Retailers could require that customers who want to use the washroom must ask for a key or be escorted to the facility.

No Physical Changes to Stores

It is expected that the economic impact on most retailers will be modest. Many retailers already comply with the spirit of the proposed changes to the Property Standards By-law; therefore, the direct monetary cost to these retailers would likely be the modest cost of providing signage.

Most important, the proposed changes to the by-law will not require most retailers to make physical changes to their premises, unless they have removed or made changes to washrooms without a building permit.

In some cases, the additional cost of escorting customers to washrooms that are located in the back of the store or in a storage area may cause some retailers to make physical changes to the washrooms, in order to minimize the costs of providing secure access. Without undertaking door-to-door sampling of many retail establishments, it is not possible to determine how many establishments may have to modify security systems or access points.

Additional Maintenance & Monitoring Costs

Increased use of washrooms in stores will create some additional operating costs for retailers. These are the costs of complying with the Building Code on an ongoing basis. They could include more frequent cleaning, additional supplies and water usage as well as additional costs for policing access to the washroom, where the store does not want to make them available to all customers with no restrictions. Conversely, those retailers that currently provide unrestricted access to their washrooms may see reduced usage and reduced maintenance costs.

Several stakeholders identified security as a major reason why some retailers do not allow customers to use their washrooms. The proposed by-law addresses these concerns by leaving room for the shopkeeper to exercise some discretion regarding who is allowed to use the facilities. The revised by-law also provides an exemption from the by-law where there is only one attendant in the store.

Rights vs. Privileges

One important change that the amendment to the by-law will have is to shift public perceptions. Currently, most residents view using a washroom at a store as a privilege.

The proposed amendments to the by-law will change that perception to “I have a right to use the facilities”. There may be a small detrimental impact on stores that currently allow customers to use their washrooms, because, at present, the privilege of using the washroom may be a source of goodwill for the business.

The proposed amendments to the by-law do not grant the right to use the washroom to all members of the public; however, there may be a perception that this is the case, particularly if standardized signs are required in all stores. This may put some shopkeepers in a potential conflict situation with a member of the public who clearly is not a customer. It may be more difficult to say, “No, you may not use the washroom; It is for customers only”, than it would be to say that the store has a policy that the washrooms are only for employees.

Signage Requirements

For most retailers, the signage requirements in the proposed by-law represent a modest cost to purchase and install the required signage. However, some retailers have invested large sums of money in creating an image or theme in their establishments, which might be detrimentally impacted by the requirement to post standardized directional signage at the main customer service counter.

In preparing this report, Economic Development staff held consultations with retail industry representatives and met with Municipal Licensing and Standards staff several times to discuss the potential impacts. As a result of these discussions, Municipal Licensing and Standards staff have indicated a willingness to make a change to the proposed by-law to provide for some signage flexibility contingent upon Municipal Licensing and Standards approval.

Compliance

Municipal Licensing and Standards staff have indicated that it is not their intention to implement a pro-active enforcement campaign. The intent is only to deal with complaints that arise through the District Investigations unit.

Any complaint that results in a determination of non-compliance (with the proposed by-law amendment) will be dealt with in the same fashion as other property standards by-law matters. The investigating officer will determine what the appropriate time frame for compliance shall be. However, this period cannot be less than 19 days from the date the order is issued. The property owner would then have 14 days to appeal the order (if they so choose) to the Property Standards Appeal Committee; however, a \$200 application fee is required to do so. Time frames for compliance are generally determined based on the amount of work that has to be carried out.

Conclusion

This issue is a case of finding an appropriate balance between the rights of retailers and the undeniable benefits to the general public of having greater access to washroom facilities in retail establishments. The direct economic impact of this amendment on retailers is likely to be modest, but may be seen by some retail establishments as a constraint.

CONTACT

Peter Viducis
Manager, Economic Research
Tel: 416-392-3396
Fax: 416-397-5332
Email: pviducis@toronto.ca

SIGNATURE

Mike Williams, General Manager
Economic Development, Culture and Tourism