



STAFF REPORT ACTION REQUIRED

Banning the possession, sale, and consumption of shark fin products in Toronto

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| Date: | October 4, 2011 |
| To: | Licensing and Standards Committee |
| From: | Executive Director, Municipal Licensing and Standards |
| Wards: | All |
| Reference Number: | P:\2011\Cluster B\MLS\LS11020 |

SUMMARY

This report is in response to the request from the Licensing and Standards Committee and City Council to have the Executive Director, Municipal Licensing and Standards report on a by-law that would prohibit the possession, sale and consumption of shark fin products in Toronto. This report outlines the feasibility of introducing such a ban.

Municipal Licensing and Standards staff have analysed the jurisdictional authorities and enforcement practices of a number of municipal, provincial and federal bodies in North America. Staff have also reviewed national and international data on shark fishing as well as reports on recent trends in the shark population.

Although staff have identified clear concerns with the shark-fin industry, no clear municipal purpose –mainly health and safety, consumer protection, or nuisance control– exists. The matter is one that clearly and more properly rests with more senior levels of government. In addition, there are certain enforcement implications that would impede effective enforcement of the by-law, thus creating serious limitations in any municipally enacted legislation. This has been the experience in most of other jurisdictions in North America that have passed such a ban at provincial, state, and municipal levels. This reinforces the conclusion that the regulation of shark fins is within the jurisdictional mandate of the Federal Government; not within the authority of municipalities.

Recognising the global environmental importance of the matter, however, staff recommend that City Council request the Federal Government to ban the importation of shark fin, cartilage and all other derivative products to Canada and to actively protect shark populations in Canadian waters.

The City Solicitor was consulted in preparation of this report and concurs with its recommendations.

RECOMMENDATIONS

The Acting Executive Director, Municipal Licensing and Standards, recommends that City Council:

- (1) Request the Federal Government to introduce proactive regulations to ban the importation of shark fin, cartilage and all other derivative products to Canada and to undertake to actively protect shark populations in Canadian waters.

FINANCIAL IMPACT

There is no financial impact to the Division's budget as a result of the recommendations in this report. No resources are currently employed in the regulation of shark fin products.

The Deputy City Manager and Chief Financial Officer has reviewed this report and agrees with the financial impact information.

DECISION HISTORY

City Council, at its meeting of June 14, 2011, referred Motion MM9.3 to the Licensing and Standards Committee and the Committee in turn requested that the Executive Director, Municipal Licensing and Standards, report back to the Licensing and Standards Committee on a by-law that would prohibit the possession, sale and consumption of all shark fin products in Toronto.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2011.LS7.2>

ISSUE BACKGROUND

Shark finning refers to the removal of shark fins while discarding the rest of the live animal back into the water. Whereas the practice of shark finning is prohibited by the Canadian federal law, shark fins are a legal product in Canada. There is currently no federal or provincial legislation controlling the shark fin trade or the importation of the fins.

On May 24, 2011, the City of Brantford became the first municipality in Canada that banned the possession, sale and consumption of shark fin and shark fin products. The Town of Oakville passed a similar motion on June 20, 2011.

On September 7, 2011, the City of Mississauga released a report that concluded that it was not under the authority of a local municipality to prohibit the sale and consumption of shark fins. The report also suggested that this issue "needs to be dealt with by the Federal Government".

The Green Party federal leader has initiated an action to ban shark fin and derivative products at the federal level. A petition is reportedly to be presented to the House of Commons this Fall.

International Practices

Whereas shark finning is illegal in a number of countries worldwide, only several jurisdictions have actually imposed bans on shark fin products (e.g., the Pacific territory of Palau, the Marshal Islands, the Maldives, the Commonwealth of the Northern Marianas Islands, Honduras, the States of Hawaii, Washington, Oregon and California; the latter being the major market for shark fin products in North America). Reportedly, China is also considering the institutionalization of a ban on shark fin trade. As of the date of this report no update was available as to the status of the proposal made by the Deputy to the National People's Congress –the highest legislature in China.

The majority of anti shark-finning and trade laws, thus, are passed at the federal and/or state levels. However, while prohibitions imposed at the state level –as is the case with the U.S. state – create a solid base to control commercial and public trade, the regulation of individual consumption has proven to be nearly impossible. Shark fin –which is a legal product in other U.S. states– can easily be brought in to the jurisdictions where it is prohibited, and be consumed in households or even traded in underground markets. In addition, relocation of the market to another jurisdiction is another possible option when a state-level ban is in place. These limitations can be minimized by federal regulations and laws.

COMMENTS

The concept of banning the trade and possession of shark fin products at the municipal level needs to be considered mainly from the jurisdictional and enforcement perspectives.

Municipal Purpose and Jurisdiction

Under Section 8(2) of the City of Toronto Act, 2006 (COTA), the City is able to pass by-laws that have a clear and defensible municipal purpose. A by-law enacted without evidence supporting a proper municipal purpose is highly vulnerable to legal challenge.

The powers to pass by-laws should be applied in cases where such by-laws would enhance the City's ability to respond to municipal issues. The Supreme Court of Canada has held that a municipal issue is one that engages the community as a local entity within its territorial boundaries; hence, it should not be applicable to broader issues that extend beyond its jurisdiction. Section 15 of COTA specifically states that "City by-laws ... apply only within the boundaries of the City..."

Shark fishing and landing is regulated by federal legislation. The City would therefore not be able to stop shark fins –a legal product in Canada– from entering its municipal territory. The City cannot directly regulate the trade of the shark fins (typically within the purview of the higher-level government) outside its territorial boundaries. It can be seen as overstepping its jurisdictional powers to regulate such trade by imposing a

prohibition on selling a legal product to Toronto food stores and establishments, and on possessing and consuming such product within the City limits.

It should be noted that shark fins are usually sold in frozen or dried form. Frozen, they come in strands and are ready to use after soaking for an hour. Dried, there are two versions available –skinned (shredded) or un-skinned (whole)– and they require more preparation. In both cases, shark fins arrive in Canada as processed food products and not as fresh catch. There are no local animal welfare issues involved. As a food product there are no conclusive identifiable health concerns over its consumption.

Consequently, the only effective way to deal with this issue would be to ban it at the national level, which is clearly beyond the City's jurisdiction. It is also important to note that banning a legal product can create a precedent for potential prohibition of other legal products.

The City has no general power to prohibit, but must ground any of its actions in a sphere of municipal jurisdiction. Even the most frequently-cited examples of the City's banning of a product or activity –smoking and pesticides– were not bans but regulation; smoking and pesticides are still permitted in Toronto under more controlled circumstances.

Enforcement challenges

Shark fins can be freely purchased in other jurisdictions in Canada, including in the municipalities bordering with the City of Toronto. It would be very difficult, at best, and nearly impossible, at worst, to enforce the ban on a product that can be legally and easily purchased outside of the Toronto boundaries and easily transported into the City. This issue would create considerable challenges with respect to both enforcement powers and enforcement efforts, namely who would enforce the ban and how it could and should be done.

Furthermore, enforcement of a ban on possession, sale and consumption of shark fin products implies that some search and seizure powers would have to be granted to the City's by-law enforcement officers to look for and secure the evidence of any by-law contraventions. Presumably, these powers would extend to inspecting and searching commercial establishments as well as prohibiting individual consumption. The latter could require powers of entry that by-law enforcement officers do not have –mainly entering private residences or establishments that do not require a licence. These challenges, among other issues, would render any such by-law (if passed despite jurisdictional barriers to doing so) virtually unenforceable.

CONCLUSION

Based on the research of staff, Municipal Licensing and Standards conclude that the municipal authority cannot be extended to institutionalize a ban on a legal product within its territorial limits. It is an issue that needs to be dealt with by the Federal Government and, therefore, staff recommend that Licensing and Standards Committee and Council, in view of significant decrease in the shark population, make a statement to the Federal Government to introduce proactive regulations to ban the importation of shark fin,

cartilage and all other derivative products to Canada and to protect shark population in Canadian waters.

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SIGNATURE

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