



## Member Motion

### City Council

#### Motion without Notice

MM24.25	ACTION			Ward:20
---------	--------	--	--	---------

**Liquor Licence Application to Remove Conditions - Parlour (formerly Fomo), 270 Adelaide Street West, Toronto, Licence Number 802333 - by Councillor Adam Vaughan, seconded by Councillor Kristyn Wong-Tam**

*\* This Motion has been deemed urgent by the Chair.*

*\* This Motion is not subject to a vote to waive referral.*

*\* This Motion has been added to the agenda and is before Council for debate.*

#### Recommendations

Councillor Adam Vaughan, seconded by Councillor Kristyn Wong-Tam, recommends that:

1. City Council direct the City Clerk to advise the Licence Appeal Tribunal (“LAT”) that the City of Toronto objects to the application to remove two conditions attached to the liquor licence for FOMO (Parlour), 270 Adelaide Street West (the “Premises”), as no change of circumstances has occurred at the Premises to warrant their removal, and that the LAT should issue a Proposal to Refuse the application
2. City Council request the LAT to provide the City of Toronto with an opportunity to participate in any proceedings with respect to the Premises.
3. City Council authorize the City Solicitor to attend all proceedings before the LAT in this matter.

#### Summary

City Council, at its meeting on March 31 and April 1, 2010, adopted Item No. TE32.126, a Resolution of Council declaring that the issuance of a liquor licence for FOMO at 270 Adelaide Street West (the “Premises”) was not in the public interest having regard for the needs and wishes of the residents unless suitable conditions were placed on the licence. The City and the Licensee agreed upon 12 conditions that were contained in a Consent Agreement executed by both parties, and the licence was issued with the 12 conditions attached. The agreement contained a provision that the City be notified should the Licensee or its successor make an application to remove any or all of the conditions.

On May 28, 2012, the City Solicitor’s office received a letter from the Licensee stating that an application had been submitted to the Alcohol and Gaming Commission of Ontario to remove the following two conditions from the liquor licence:

- iii. The Licensee shall ensure that a seat is available for a majority (greater than 50%) of the approved occupancy, as specified on the liquor licence, during all hours of operation.
- ix. The Licensee shall ensure that any sound resulting from the operation of the business is not audible beyond a reasonable distance from the lot line of the property on which the premise is located. This clause includes, but is not limited to, sound that is generated by any internal or external loudspeakers, conversation by patrons within the premises, bussing, garbage disposal and bottle disposal. A reasonable distance for such sound to be considered in non-compliance is any point opposite the Licensee's premises that is separated by a public street, public or private laneway or a parting wall between the Licensee's premises and any adjacent space.

The application to remove the conditions was submitted to the Alcohol and Gaming Commission on March 1, 2012, and forward to the Licence Appeal Tribunal ("LAT") on March 7, 2012. The deadline for submissions to the LAT to object to the removal of the conditions was May 5, 2012. As a result of the Licensee's failure to inform the City of the application in a timely manner the City was not able to object to the application prior to the deadline for submissions. Interim Rule 16.6.4 of the LAT's Rules of Practice states that the Tribunal will not consider late submissions of objections for applications to remove conditions from a licence. Because of the contractual obligation to inform the City of the application and the late notification by the Licensee the City requests that our objection to the removal of the conditions be accepted and considered by the LAT when making a decision on the application.

The City objects to the removal of the conditions from the licence as a change in circumstances that would warrant their removal has not occurred at the Premises. The two conditions that the Licensee is applying to remove were placed on the licence to limit impacts on area residents that occur from a restaurant/night club use. Requiring a seat for 50% of the occupancy of the Premises and ensuring that sound is not audible beyond a reasonable distance are important means of limiting noise and other impacts on area residents. The Premises intends to continue to operate as a restaurant/nightclub, and the removal of the conditions will increase the potential for impacts on the area residents. Condition ix, the noise condition, is a critical condition for the City and has been placed on numerous liquor licences for this type of establishment in the City's entertainment district. A change in circumstance has not occurred to permit the removal of the two conditions and it is not in the public interest having regard to the needs and wishes of the residents to have the conditions removed. The Licence Appeal Tribunal should issue a Proposal to Refuse the application.

The deadline for responses to the Licence Appeal Tribunal on this matter has passed. The Licence Appeal Tribunal is waiting for direction from the City before proceeding.

(Submitted to City Council on June 6 and 7, 2012 as MM24.25)

### **Background Information (City Council)**

Member Motion MM24.25

<http://www.toronto.ca/legdocs/mmis/2012/mm/bgrd/backgroundfile-48212.pdf>