
City Council

Motion Without Notice

MM51.42	ACTION			Ward:19
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Review of Liquor Licence 2270121 Ontario Inc. o/a Church Aperitivo Bar, 1090 Queen Street West, Licence Number 814239 - by Councillor Mike Layton, seconded by Councillor Janet Davis

** Notice of this Motion has not been given. A two-thirds vote is required to waive notice.
* This Motion is subject to referral to the Toronto and East York Community Council. A two-thirds vote is required to waive referral.
* This Motion relates to an Alcohol and Gaming Commission of Ontario Hearing and has been deemed urgent.*

Recommendations

Councillor Mike Layton, seconded by Councillor Janet Davis, recommends that:

1. City Council direct the City Solicitor to request the Alcohol and Gaming Commission of Ontario (AGCO) to issue a Notice of Proposal to suspend or revoke the liquor licence for 1090 Queen Street West - Church Aperitivo (the “Premises”) on the grounds that the liquor licence is not in the public interest.
2. City Council request the AGCO and the Licence Appeal Tribunal (LAT) to provide the City with an opportunity to participate in any proceedings with respect to a Notice of Proposal to review or revoke the licence for the Premises, and that any hearing at the LAT regarding this Notice of Proposal be consolidated with the LAT pre-hearing for the current application for increased capacity scheduled for May 23, 2014.
3. City Council authorize the City Solicitor to attend all proceedings before the AGCO or the LAT in this matter and direct the City Solicitor to take all necessary actions so as to give effect to this Motion.

Summary

2270121 Ontario Inc. (the “Licensee”), operating as Church Aperitivo Bar, 1090 Queen Street West (the “Premises”), was granted a Liquor Licence (the “Licence”) by the Alcohol and Gaming Commission (“AGCO”) in August, 2011, subject to the imposition of 17 conditions (the “Original Conditions”). The Original Conditions, which were the product of extensive

community input, included conditions that the Premises would at all times adhere to the City of Toronto Noise By-law (Condition 1), would ensure that any sound resulting from the indoor operation of the business not be audible beyond the lot line of the property (Condition 2), and would require that a designated employee make efforts to ensure people in the immediate area of the premises were not disturbing residents (Condition 10). The Premises has been the subject of numerous complaints as a result of the behaviour of its patrons and the excessive noise levels resulting from the operation of The Premises. The Premises has been charged by the City of Toronto with violations of the City's Noise By-law and by the AGCO with violations of the Original Conditions related to noise.

In June 2013, the licensee applied to the Licence Appeal Tribunal (LAT) to remove Condition 10 from their liquor licence. At its meeting on July 16, 17, 18 and 19, City Council adopted MM37.39, objecting to the removal of the condition. In September, 2013, the licensee applied to the LAT to remove Condition 2 from their licence, and at its meeting on October 8, 9, 10 and 11, 2013, City Council adopted MM39.23 objecting to the removal of the Condition. A Notice of Proposal to Refuse the Removal of Conditions 2 and 10 was issued by the AGCO and the licensee appealed the refusal to the LAT. Both applications were consolidated and a pre-hearing on them was held at the LAT on October 16, 2013. A hearing was scheduled for April 23 to 25, 2014.

The neighbourhood community in good faith entered into minutes of settlement (the "Minutes") dated April 4, 2014 (copy attached hereto as part of the LAT order) with the licensee to replace Conditions 2 and 10 with new conditions to read as follows:

- Condition 2. the Licensee shall ensure that any sound system used for the indoor operation of the business:
- a. is installed with a lockable and locked sound level limiter or lockable and locked speaker management system (the "Limiter"), the setting of which shall not permit a sound level greater than 85 A-weighted decibels (85 dBA) and 90 linear decibels (90 dB), due solely to the sound system, as measured with an ANSI Class 1 integrating sound level meter, on average (Leq) basis, within the venue when the venue is occupied. Only the managers and owners of the Applicant will be able to open the Limiter; and
 - b. does not locate any speakers closer than 2 meters from the common wall separating the establishment and the neighbouring building at 1088 Queen Street West.
- Condition 10. the Licensee shall ensure that a designated employee is on duty between 10:00 p.m. and the closure of the establishment on Thursday, Friday and Saturday nights to advise departing patrons of Church Aperitivo that there are residents living nearby and to request those patrons that they do not linger or cause a disturbance in the nearby area as they depart. The establishment shall not be considered to be closed until all patrons have departed for the night.

(the “Modified Conditions”)

Legal counsel for the AGCO advised the parties in opposition to the applications that the AGCO would not enforce Conditions 2 and 10, even in modified form and therefore the AGCO objected to having them placed as conditions on The Licence. At a pre-hearing on April 4, 2014, the LAT approved the applications to remove Conditions 1 and 2 on the basis that the public interest objectors were relying on the minutes and that the licensee agreed to operate in accordance with the Minutes. The LAT Order (copy attached hereto) clearly states that the AGCO Registrar may consider proof of breach of the minutes on applications with respect to the licence. This would include a request to review or revoke the licence.

The neighbourhood objectors have advised the City that the Limiter has still not been installed by the Licensee and noise levels continue to be excessive and the behaviour of the patrons of the Premises continues to be a significant problem. The Licensee has ignored the continued urgent requests by the community since the issuance of the LAT Order to resolve these issues of excessive noise and the unruly behaviour of the patrons.

In February 2014, the Licensee submitted an application to the AGCO to increase its licensed capacity from 99 to 180 patrons. At its meeting on February 19 and 20, 2014, City Council adopted MM48.11, objecting to the Increased Capacity Application. If this application is successful members of the community believe the impacts on residents identified within this Motion will worsen.

This matter is considered urgent as members of the community continue to be negatively impacted by the Premises, and a pre-hearing for the Increased Capacity Application has been scheduled for May 23, 2014 at the LAT.

(Submitted to City Council on May 6 and 7, 2014 as MM51.42)

Background Information (City Council)

Member Motion MM51.42

Licence Appeal Tribunal Order and Minutes of Settlement

<http://www.toronto.ca/legdocs/mmis/2014/mm/bgrd/backgroundfile-69076.pdf>