



REPORT FOR ACTION

Update on Liquor Licensing Issues

Date: October 6, 2016

To: Liquor Licensing Issues Task Force

From: Executive Director, Municipal Licensing and Standards

Wards: All

SUMMARY

This report responds to requests made by the Liquor Licensing Issues Task Force for staff to report on the following:

- Efforts by Legal Services to attach conditions to new liquor licences at the Licence Appeal Tribunal; and
- The use of the Toronto Licensing Tribunal to secure additional conditions on licences with repeated violations of City by-laws and what thresholds could be used to appeal a licence to the Toronto Licensing Tribunal.

This report responds to these requests within a larger context which recognizes that while enforcement and regulation are key tools to effectively managing alcohol-related community nuisance, other tools and inter-related issues also need to be taken into consideration. Some examples of these issues include the presence of street lighting, availability of (public) toilets, levels of street animation, education and awareness materials, and access to late night transportation. As a result of the ongoing work of the working groups examining this issue, staff have identified that a broader strategy to manage these inter-related issues, and the governance of the city at night, is necessary.

Legal Services was consulted in the preparation of this report.

RECOMMENDATIONS

The Executive Director, Municipal Licensing and Standards recommends that:

1. Liquor Licensing Issues Task Force receive this report for information.

FINANCIAL IMPACT

There is no financial impact resulting from the adoption of the recommendation in this report.

DECISION HISTORY

1. At its meeting of February 10 and 11, 2015, City Council established a Task Force on Liquor Licensing Issues.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2015.LS1.3>

2. The Liquor Licensing Issues Task Force met on October 30, 2015. At that time, staff were requested to report back to the Task Force on the following matters:

- Efforts by Legal Services to attach conditions to new liquor licences at the Licence Appeal Tribunal.
- The use of the Toronto Licensing Tribunal to secure additional conditions on licences with repeated violations of City by-laws and what thresholds could be used to appeal a licence to the Toronto Licensing Tribunal; and

Additionally, the Task Force requested staff to include a recommendation for City Council to request amendments to the Liquor Licence Act to allow for the yearly renewal and review of liquor licenses, when reporting to the Licensing and Standards Committee on liquor licensing issues.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2015.LL1.1>

3. At its meeting of May 3-5, 2016, City Council directed the Executive Director, Municipal Licensing and Standards, in consultation with the City Manager and the City Solicitor, to review the Toronto Licensing Tribunal Relationship Framework and any other relevant by-laws, policies and processes to provide opportunities for broader direct community input in Toronto Licensing Tribunal matters and to report back to Executive Committee by the end of 2016.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2016.MM18.6>

COMMENTS

Toronto's increasing population is creating an increasing demand for venues to socialize, eat, drink, listen to music, and dance. Increased numbers of people can enhance vibrancy and stimulate the economy, but can also place added pressure on public safety resources and impact the quality of life of residents. The framework for managing these forces takes place within a complex policy arena, with municipal and

provincial regulations working together to address crime, disorder, public safety, and general community nuisance, while at the same time promoting economic activity. These regulations are enforced by a myriad of cross-jurisdictional agencies including but not limited to the AGCO, Toronto Police, Ontario Provincial Police, Municipal Licensing and Standards (ML&S), Toronto Fire, Toronto Building, and Public Health.

The Night-time Economy

While the regulation and enforcement activities of these agencies is important, there are factors outside of their control that also influence patterns of crime, public safety and community nuisance. Examples of these factors include the presence of street lighting, availability of (public) toilets, levels of street animation, education and awareness materials, and access to late night transportation. Many cities have started to study the inter-relationship of these issues, with the understanding that a holistic approach to management can serve to reduce community nuisance and public safety concerns, while also increase opportunities for economic development. The "Night-time Economy" is a term that is frequently used to refer to this field of study.

Both day and night-time economies are important, however there are unique challenges to managing a large urban centre at night: the volume of pedestrians changes significantly in some areas at night. The purpose of visits, destinations, and the types of businesses that are open are also different. These changes can impact public spaces, how they are used, and subsequent levels of maintenance. Night-time visitors also experience different transportation challenges for moving about and returning home. And finally, the behaviour of many night-time visitors is different to those who visit in the daytime, with the most noticeable difference being increased levels of intoxication.

Enforcement of Problem Establishments

A review of data demonstrates a correlation between the Night-time Economy, community nuisance and alcohol: for example, the majority of noise-related complaints received by the City relate to night-time activities; and the majority of subsequent noise convictions secured through the Provincial court system are related to establishments with a liquor licence. Enforcing community nuisance related to the Night-time Economy is also becoming more demanding. In light of this, the By-law Enforcement team was restructured approximately 18-months ago so that community nuisance issues which arise at night-time can be addressed.

ML&S has a database that is used to track community nuisance complaints for each licensed establishment in the City. Following a complaint, a graduated approach to enforcement action is taken that begins by promoting compliance and cooperation through means of education. Subsequent checks are made at regular intervals, with non-compliance then leading to formal warnings and charges. If these actions fail to result in improvements, ML&S can escalate efforts further. One of these escalated options includes the coordination of enforcement "blitzes" to target high risk establishments. Depending on the issues of concern, these blitzes can take place with

one or all of the following agencies: AGCO, Toronto Police, and Toronto Fire. Approximately 25 coordinated enforcement inspections have been undertaken in the past 18 months, visiting between 6 and 8 establishments each time. While resource intensive, these initiatives are effective in reducing complaints in the short-medium term, and bringing repeat offenders into compliance with regulations. If the above measures are unsuccessful, ML&S can also seek recourse to the Toronto Licensing Tribunal (TLT). The AGCO can also employ escalated measures to address compliance issues related to the Liquor Licence Act. These measures are outlined below.

Toronto Licensing Tribunal

ML&S will refer an establishment to the Toronto Licensing Tribunal (TLT) where there are significant repeated concerns with the operation ("behaviour") of an establishment, and when less resource-intensive methods to achieve compliance are unsuccessful. There are no defined triggers for referral to the TLT in these instances, as all cases are unique and need to be reviewed on their own merits and available evidence. Typically, ML&S will refer a business to the TLT following multiple by-law convictions, however evidence from other sources may also be used if available. Examples include Toronto Police offence information, and credible complainant(s) against an establishment. Staff are presently investigating the suitability of using AGCO inspection data and decisions from the provincial Licence Appeal Tribunal (LAT) as evidence for TLT hearings. This would enable businesses that have had significant breaches of the Liquor Licence Act to have their business licence reviewed.

The objective of staff throughout this process is to bring businesses into compliance with the regulatory framework. In the 18-month period from December 2014 – July 2016, the Tribunal held 13 hearings related to 5 Eating Establishments and 1 Nightclub. These tribunal hearings resulted in one licence being revoked; one application being withdrawn; one application being surrendered; and conditions being attached to the business licence of 3 establishments. Conditions attached to these licences typically require the operator to address the primary source of community nuisance (most frequently this is noise); and comply with the zoning by-law. Frequently, conditions also allow ML&S to bring the establishment before the tribunal in a more expeditious manner, should additional bylaw violations take place. A review of complaints data shows that conditions imposed by the TLT are successful in bringing operators into compliance with the regulatory framework (i.e. complaints have been eliminated or significantly reduced following the imposition of conditions by the TLT on a business licence).

Attaching Conditions to a New Liquor Licence

Attaching conditions to a new liquor licence is one of many tools that can be used to help manage alcohol-related public nuisance. Since March of 2014, when the AGCO's practice of attaching conditions to a liquor licence changed, the City has objected to numerous applications for a new liquor licence. Through the subsequent pre-hearing conference process, or the formal Licence Appeal Tribunal (LAT) process, common conditions that LAT has agreed to attach to a liquor licence include a requirement to

post a prominent sign to encourage departing patrons to be considerate of the surrounding community; and for the business operator to provide a telephone number for residents to register concerns or complaints. If the liquor licence application includes an outdoor area such as a rooftop patio, the City has also been successful in requesting LAT to attach conditions aimed at minimizing noise that may disturb local residents. Specifically, this includes conditions that restrict hours of alcohol service on a patio; restrict the hours of operation of a patio; and restrict the type of entertainment on a patio (for example, amplified speakers).

Adding Conditions to an Existing Liquor Licence

Conditions can be added to an existing liquor licence at any time as part of the AGCO's risk-based approach to licensing; through Liquor Licence Renewals; and through Liquor Licence Transfers. The ability of the AGCO Registrar to place conditions on a liquor licence of an operating establishment is an important tool to help address community nuisance and public safety concerns. In recognition of this, ML&S shares municipal convictions data and Toronto Licensing Tribunal conditions with the AGCO. This data, along with AGCO inspection and complaints data, is used by the Registrar as the basis for developing a variety of regulatory responses which can include imposing conditions on a liquor licence.

For all transfers, the AGCO undertakes a risk assessment of the proposed licensee to ensure that they are eligible for a liquor licence. As part of this, applicants are required to provide a personal history report, and an outline of past experience in the food and alcohol industry as part of the transfer application. If risks relating to the new owner are identified through this process, the Registrar may place conditions on the licensee. If the applicant does not meet the requirements, the Registrar can refuse the transfer.

A risk assessment is also undertaken on the proposed business model/type as part of a transfer request. If the new owner is proposing to change the type of business through the transfer where greater risk is identified (for example, a restaurant might become a nightclub), the Registrar may place conditions on the transferred liquor licence which addresses these inherent risks.

Public notice is required through the transfer process if the new licensee proposes an increase of capacity that is greater than 25% over the approved capacity of the existing licence. However, if the proposed capacity for the new venue remains the same as the existing capacity, or if it increases less than 25% over existing, there is no requirement for public notice and therefore no opportunity for a municipality or resident to object to the transfer.

Suspensions/Revocations of a Liquor Licence

Where there are serious violations of the Liquor Licence Act, the Registrar of the AGCO may issue an interim suspension of a liquor licence. An interim suspension takes effect immediately. The Registrar or the Licence Appeal Tribunal may also revoke a licence, depending on the severity of the violation. In the 18-month period from December 2014

– July 2016, 24 businesses received a suspension on their liquor licence and 3 businesses operating in Toronto had their liquor licence revoked. The average length of suspension was for 24 days. Reasons for liquor licence suspensions related to significant criminal and public safety issues including overcrowding; serving minors; permitting drunkenness and/or narcotics on the premises; permitting unlawful gambling; and service outside prescribed hours.

The Regulatory Framework: City of Toronto Act (COTA)

City Council provided recommendations to the Province in September 2015 on ways in which the City of Toronto Act (COTA) could be amended. This was part of the 5-year review of COTA. Four of these recommendations were related to liquor licensing:

1. The City of Toronto is a party to any appeal by an applicant to the Licence Appeal Tribunal under the Liquor Licence Act.
2. The City of Toronto is entitled to all notices and disclosures flowing from an appeal to the Licence Appeal Tribunal by the applicant.
3. If City Council passes a resolution objecting to a liquor licence application, the applicant will bear the onus of showing the Licence Appeal Tribunal why it should be entitled to the liquor licence.
4. In granting a licence, the Licence Appeal Tribunal shall set out standards for activities that originate inside or around the licenced premises but impact the neighbourhood such as noise and loitering.

In providing this request to the Province, City Council authorized the Mayor and the City Manager to negotiate any details as required. To date, the Province has not made a formal decision with respect to these or any other COTA amendments requested by City Council.

Delegation of Powers

The City plays a major role in the issuance of two types of temporary liquor permits: Special Occasion Permits (SOP's) and Temporary Extensions. In order to obtain an SOP for an event of municipal significance, an applicant must first obtain a resolution from the City declaring the event to be of municipal significance. City Council has delegated authority for these requests to Community Council. However, requests for Temporary Extensions must be considered by City Council, because COTA does not provide for the delegation of these specific powers.

Staff are presently in discussions with the Province to determine if COTA and its Regulations can be amended to allow for the delegation of decision-making with respect to Temporary Extensions. Delegation of this decision-making could have a number of benefits: it would allow decisions about local neighbourhood matters to be considered by the local Community Council; it could reduce "red tape" and time delays for

applicants; and it could enable City Council to dedicate time and resources to more pressing city-wide issues. Should COTA and its Regulations be amended and these powers be granted, an amendment to Municipal Code Chapter 27, Council Procedures would then be necessary to establish any new procedures. This process would also require formal public notice.

The Regulatory Framework: Toronto Municipal Code

Providing an effective response to public nuisance complaints requires a modern and effective licensing and regulatory structure. In recognition of this, staff initiated a multi-phased review in 2015 of Municipal Code Chapter 591, Noise; and of Municipal Code Chapter 545, Licensing.

Chapter 591, Noise

Initial amendments to this chapter were considered by the Licensing and Standards Committee at its meeting of May 2016. At that meeting the report was deferred to enable further consultation. Since then, ML&S has established a Noise Working Committee to review and refine the proposed code amendments. Public Health has also initiated a Noise Monitoring Study. This study will examine a range of noise types and levels at locations throughout the city to enable a better understanding of the relationship between noise and health. This study, and outcomes from the Noise Working Committee, will inform any further refinements to the noise by-law recommendations. These recommendations will be presented to Licensing and Standards Committee in 2017.

Chapter 545, Licensing

Toronto licenses bars, restaurants and other entertainment venues through the Toronto Municipal Code, Chapter 545. The majority of bars and restaurants are licensed under this chapter as an "Eating Establishment". This term aligns with the zoning by-law, and is therefore helpful in ensuring land use compatibility. However, the Night-time Economy has diversified rapidly in the past decade, and establishments that are now common today are sometimes difficult to classify within the existing business licence categories.

The comprehensive review of Chapter 545 is intended to address these and other challenges, such as littering. Initial amendments aimed at streamlining licensing processes and enhancing readability were adopted by City Council in June 2015. Additional amendments to support litter reduction were recently adopted by City Council on October 6, 2016. The scope of work still to be undertaken includes the consolidation of food provisions; updating of licensing categories and definitions; and an examination ways in which the Toronto Licensing Tribunal can be engaged more effectively. Central to this aspect of the review is the ability to promptly address community nuisance through the placement of licensing conditions on high risk establishments, while also maintaining a fair and transparent process that is accessible to the public. This work is ongoing and will continue into 2017.

Education and Prevention

Education campaigns and training materials are helpful in raising awareness about the impacts of alcohol consumption, and preventing related safety and community nuisance issues. The AGCO presently requires all staff who serve alcohol to undertake Smart Serve training. This training program instructs staff on responsible service techniques and on how to recognize signs of intoxication. The Centre for Addiction and Mental Health (CAMH) used to provide training that was aimed at increasing bar staff's ability to reduce the risk of customers becoming aggressive, violent or injured, however the program has been discontinued and is no longer available. More recently, the Best Bar None program has become available in downtown Toronto. Best Bar None is an industry-led accreditation program that is also supported by the AGCO and ORHMA. It promotes the highest standards for the sale and service of alcohol, as well as the importance of businesses maintaining good relationships with the local community and neighbouring hospitality partners.

Through meetings of the Hospitality Working Group, a need for education materials aimed at business operators was identified. In recognition of this need, the Working Group developed a "Good Neighbour Guide" for operators of bars, restaurants and other Night-time Economy entertainment venues (Attachment 1). This Guide is a tool to assist business operators and their staff understand specific measures they can take to reduce nuisance impacts upon local residents, and in doing so, to be a "good neighbour".

Given that Toronto's Night-time Economy is a regional and international destination, there is a challenge in communicating the "good neighbour" message to non-residents. This challenge reinforces the need to work in partnership with other local agencies when promoting this message. With the Good Neighbour Guide receiving support from the AGCO, Toronto Police Service, Toronto Association of Business Improvement Areas (TABIA), and the Ontario Restaurant, Hotel and Motel Association (ORHMA), staff are confident that over time, it will play an important role in increasing social responsibility, and reducing community nuisance issues.

Understanding Entertainment Models and Behavioural Patterns

Over the past year, it has become clear to both the Regulatory Working Group and the Hospitality Working Group that further study is needed to understand the relationship between localized community nuisance; the type and number of entertainment options that are available; and the related public amenities that are available to deter community nuisance (for example, street lighting, and access to (public) toilets). Further study of these issues would be helpful in determining the levels and types of enforcement responses that are required on a more localized basis; in informing policy decisions about local public realm investments; and in identifying specific locations that might benefit from Crime Prevention Through Environmental Design techniques (CPTED).

Access to Late Night Transportation

Ensuring that people can get home quickly and conveniently after a night out can make a significant contribution to reducing community nuisance associated with the Night-time Economy. Challenges to this within the Toronto context were identified by the Regulatory Working Group. These challenges stem primarily from the closure of the rapid transportation system (approximately 1:30 a.m.) not aligning with the "last-call" for drinks at bars and other Night-time Economy venues (2:00 a.m.). Another challenge identified by the Working Group is a pattern of rush-hour traffic congestion that follows "last-call". This restricts the ability of taxis and private transportation vehicles to move people quickly out of compact areas following the closure of bars and restaurants. This in turn can lead to frustration, increased levels of anger, confrontation, and noise. Further study and consultation on this issue is needed to understand what measures can be taken to improve access to late night transportation.

Reducing "Red Tape" and Improving Business Opportunities

A frequent concern that staff hear from the business community relates to the difficulty of navigating confusing processes to apply for the permits and licences required to start a business. Additional challenges stem from the multi-jurisdictional requirements of municipal and provincial agencies. This can result in frequent duplicated requests for information, and the need to physically visit a number of different permit locations. In recognition of these challenges, ML&S has partnered with the AGCO, Service Ontario, and Innovation, Science & Economic Development Canada (ISED) to examine ways in which this process can be improved. The focus of this initiative is specifically on improving the experience for bar and restaurant applicants.

An initial workshop with staff from these agencies was held in August 2016. At this workshop, approaches to modernize the application process and improve customer service were identified. Although this initiative is in its infancy, the mutual objective of project partners is to develop a process that reduces the time, cost and effort required to start a new business. This work will continue into 2017.

Another concern from the business community relates to overly-restrictive regulations that limit creativity, variety and opportunity. Some of these concerns will be addressed through the review of Municipal Code Chapter 545, discussed previously. In addition to this review, ML&S are also in the process of reviewing and modernizing regulations for sidewalk cafes. This project, which is being jointly undertaken with Transportation Services, will create new opportunities for sidewalk cafes and outdoor dining in the Night-time Economy by establishing criteria for parklet cafes, and other configurations such as curbside cafes. Staff anticipate bringing forward recommendations related to this project in the first quarter of 2017.

Next Steps

Developing a response that recognizes the interconnections between the ranges of issues identified within the report is needed to reduce alcohol-related community nuisance in and around licensed premises in Toronto. The Hospitality Industry Working Group and Regulatory Working Group will continue to explore these issues, and develop approaches that are suitable for the local Toronto context.

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ATTACHMENTS

Attachment 1: Good Neighbour Guide for Bars, Restaurants and Entertainment Venues

ATTACHMENT 1: Good Neighbour Guide for Bars, Restaurants and Entertainment Venues

Toronto's bar, restaurant and entertainment industry is thriving. However, this success can sometimes result in negative impacts on the surrounding community due to issues related to noise, litter and public safety. This guide is a tool to raise awareness of these issues, and of the measures you can take to be a good neighbour, by providing a safe, clean, quiet environment in the vicinity of your establishment.

Requirements

1. Ensure that noise arising from entertainment or the sale and service of alcohol on your outdoor patio does not disturb local residents.
2. Ensure that amplified sound is not clearly audible beyond your lot line.
3. If you operate a nightclub, monitor line-ups outside and ensure the orderly conduct of your patrons.
4. Nightclubs are required to have a municipal noise and crowd control plan; a metal detector; and to be staffed with at least one security guard for every 100 patrons in attendance.
5. Ensure that your waste is source-separated and set out in tagged or yellow bags, after 6:00pm on collection night. If using private garbage collection, try to arrange collection and pick-up times that are not disruptive to near-by residents.
6. Keep the exterior of your establishment clean and free of litter and cigarette butts, particularly locations that are adjacent to residential areas.
7. Smoking laws must be respected. Post "No Smoking" signs at entrances and exits to smoke-free areas. Provide smokeless ashtrays a minimum distance of 9-metres from any entrance or exit, where feasible.

Additional Guidance

8. Display prominent notices at main entrances and exits advising your patrons to leave in a quiet, peaceful, and respectful manner, and to avoid littering and public urination. Employees can also reinforce these expectations to patrons exiting the establishment.
9. Provide adequate mechanical ventilation within your establishment so that open doors and/or windows are not required, and noise is contained within.
10. Inform your employees about local transit options, including vehicle-for-hire ground transportation, so that they can provide this information to exiting patrons if required.
11. Consider providing outdoor lighting to discourage nuisance activities along the street, sidewalk, or a rear laneway as appropriate, while also ensuring that light from these devices does not interfere with your neighbours.

12. Consider participating in the Best Bar None program, which is an industry-led accreditation and awards program for liquor licensees that have good relationships with the community and hospitality industry partners, and the highest standards for the responsible service of alcohol.

13. Ensure that any persons or promoters who hold events on your premises are aware of the expectations outlined in this document and adhere to this guide.

14. Establish lines of communication with your neighbours by providing a phone number for them to register complaints or concerns. Ensure the line is answered during your hours of operation, and equipped with a functioning message service for other periods.