

## **A Review of the Municipal Licensing and Standards Division's Management of Business Licences - Part Three: Eating Establishments and Nightclubs**

**Date:** October 24, 2017

**To:** Audit Committee

**From:** Auditor General

**Wards:** All

### **SUMMARY**

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The City of Toronto, through the Municipal Licensing & Standards Division (MLS), is responsible for regulating a myriad of businesses operating within its jurisdiction. The objective of this audit was to assess the effectiveness and efficiency of business licensing and By-law enforcement operations. This audit covered the period from January 1, 2015, to December 31, 2016.

Our audit results are contained in three separate reports. This report, Part 3, focuses on licensed eating establishments potentially operating as unlicensed nightclubs.

Improperly licensed nightclubs could pose a health and safety risk, and often lead to more noise complaints.

Our audit identified a number of eating establishments potentially operating as unlicensed nightclubs. Much of the problem stems from how the By-law defines a nightclub. Because of the problematic definition, MLS officers have difficulties in enforcing the laws. The By-law definition should be amended to better delineate the difference between an eating establishment and a nightclub.

The licence application process does not require applicants to provide certain crucial information, such as the number of seats. Including this information would help MLS staff ensure businesses are being properly licensed.

We provide four recommendations in this report to help the City to better address this issue.

## **RECOMMENDATIONS**

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The Auditor General recommends that:

1. City Council request the Executive Director, Municipal Licensing and Standards Division, in consultation with the City Solicitor, to review the existing definition of "entertainment establishments/nightclubs" in By-law 545 to identify the necessary changes that will strengthen the Division's inspection and enforcement efforts relating to licensed eating establishments operating as unlicensed nightclubs.
2. City Council request the Executive Director, Municipal Licensing and Standards Division, to review and amend the existing licence application form for eating establishments and nightclubs to ensure relevant information including the number of seats is obtained to facilitate the correct determination of the type of licence to be issued.
3. City Council request the Executive Director, Municipal Licensing and Standards Division, to develop and implement a risk-based follow-up inspection process after licence issuance that will require officers to visit selected eating establishments to confirm they are not offering nightclub services and settings in violation of their approved eating establishment licence.
4. City Council request the Executive Director, Municipal Licensing and Standards Division, in consultation with the City Solicitor, to review By-law 545 provisions and classifications relating to eating establishments and entertainment establishments/nightclubs to identify needs for By-law amendments.

## **FINANCIAL IMPACT**

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The implementation of the recommendations in this report will help strengthen the licensing and enforcement efforts to regulate eating establishments and nightclubs. The extent of costs savings is not determinable at this time.

## **DECISION HISTORY**

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The Auditor General's 2016 Audit Work Plan included a review of the City's licensing and enforcement operations administered by the Municipal Licensing & Standards Division. The Work Plan report is available at:

<http://www.toronto.ca/legdocs/mmis/2015/au/bgrd/backgroundfile-84582.pdf>

## **COMMENTS**

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The City of Toronto, through the Municipal Licensing & Standards Division, is responsible for regulating a myriad of businesses operating within its jurisdiction. Authority to regulate these businesses is inherent in the City of Toronto Act, 2006, and the City of Toronto Municipal Code Chapters 545 and 546.

The purpose of licensing is to ensure public health and safety, consumer protection and nuisance control.

As of December 31, 2016, the City had 7,938 licensed eating establishments and 39 licensed entertainment establishments/nightclubs (nightclubs).

To operate a nightclub, By-law 545 requires an applicant to provide noise and crowd control plans, and be "staffed with at least one security guard for every 100 patrons in attendance at the premises". The security guard at the entrance must be equipped with a metal detector. The By-law also requires that every nightclub owner have at least \$2,000,000 in insurance "comprehensive against loss or damage resulting from bodily injury to or death of one person", among other insurance requirements.

Zoning By-law 569 requires that a nightclub be located on the first storey, and it must be the only nightclub in the building, among other requirements.

Eating establishments, and other licence categories, are not subject to the same rigorous requirements as nightclubs.

In 2016, there were 831 complaints against eating establishments, half of which were noise-related.

We conducted a detailed review of 15 selected licensed eating establishments that, based on our review, could potentially be operating as unlicensed nightclubs.

These eating establishments' websites included advertisements for DJ nights and other similar events, alcoholic drink specials, late opening hours, and closing hours extending into the early morning hours. Some of the websites displayed photos and/or videos showing large groups of patrons standing, drinking, or dancing. The online and magazine reviews of these businesses also suggested they were offering nightclub services or settings.

Eleven (11) of the 15 eating establishments were investigated or inspected by MLS officers in 2016. In total, MLS officers laid nine tickets and six summons against 10 of the 15 eating establishments. These included four tickets and two summons for operating unlicensed nightclubs, all of which had been withdrawn except one ticket, which is awaiting a court decision.

As of August 2017, all of the 10 eating establishments continued to operate as licensed eating establishments.

In our view, the combination of the problematic By-law definition and issues with the application assessment could lead to more businesses that operate as nightclubs being licensed as eating establishments.

It is imperative that City By-laws are clear, specific and enforceable.

The audit report entitled "A Review of Municipal Licensing and Standards Division's Management of Business Licences - Part Three: Eating Establishments and Nightclubs"

is attached as Attachment 1. Management responses to recommendations contained in the audit report are also included in the same document.

## **CONTACT**

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## **SIGNATURE**

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Beverly Romeo-Beehler  
Auditor General

## **ATTACHMENT**

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Attachment 1: A Review of the Municipal Licensing and Standards Division's Management of Business Licences - Part Three: Eating Establishments and Nightclubs