

## AUDIT AT A GLANCE

### WHY THIS AUDIT MATTERS

Clear, specific and enforceable bylaws help to ensure that City By-law objectives are enforced in a cost-effective manner. One example where clarity is required is the definition of a nightclub.

As of December 2016, the City had nearly 8,000 licensed eating establishments and 39 licensed nightclubs. Nightclub licences are more restrictive. Applicants must provide or meet:

- noise and crowd control plans
- 1 security guard for every 100 patrons
- metal detector at entrance
- stricter zoning rules

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

### BACKGROUND

By-law 545 gives the City's Municipal Licensing and Standards Division (MLS) the power to license and inspect a variety of businesses and trades in the City. The purpose of licensing is to ensure public health and safety, consumer protection and nuisance control.

Nightclubs are defined as "*A premises, including but not limited to a dance hall or disco, used to provide dance facilities for patrons, where seating is not provided for the majority of the patrons and where food or beverage may be offered for sale as an ancillary use.*"

### BY THE NUMBERS

- 7,938 licensed eating establishments
- 39 licensed nightclubs
- 831 complaints against eating establishments, 91 against nightclubs
- 52% of all complaints against eating establishments were noise-related
- 73% of all complaints against nightclubs were noise-related
- 43 eating establishments in Central district investigated for potentially operating as nightclubs

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

### What we found

#### **A number of eating establishments are potentially operating as unlicensed nightclubs**

- We found 15 licensed eating establishments that appear to be operating as unlicensed nightclubs. Ten are located in downtown Toronto.
- Among these 15 eating establishments, MLS investigated 10 and laid various charges in 2016, including four tickets and two summons for operating illegally as nightclubs. All those charges were withdrawn except one ticket, which was pending a court decision.
- As of August 2017, all of the 10 businesses continued to operate as licensed eating establishments.
- Towards the end of our audit, we obtained from MLS a list of 43 licensed eating establishments in the Central district that have been investigated for potentially operating as unlicensed nightclubs.
- Over the years, a number of City Councillors have expressed concern about unlicensed nightclubs.

#### **By-law limitations leading to enforcement challenges**

- Much of the problem stems from how the By-law defines a nightclub. The key words are "seating is not provided for the majority of the patrons" in the definition.
- To determine whether an eating establishment is operating as a nightclub, MLS officers must count the number of patrons and the number of seats during a site visit. For example, if there are 100 patrons and 51 seats, it is not deemed as a nightclub, based on the By-law definition.
- Since patrons can come and go, it is often impractical for MLS officers to count the exact number of patrons on site. Counting the number of seats can be just as challenging, particularly when some places use benches instead of individual chairs.
- We also observed that in a number of the application forms, the applicant-provided information about operating hours, dance floor, and DJ, would suggest the business could potentially operate as a nightclub, but they were granted an eating establishment licence.
- Where there is indication that the business may operate as an unlicensed nightclub, there is no follow-up inspection process to ensure compliance with the licence requirements.

#### **How Recommendations will Benefit the City**

To ensure the City's bylaw objectives are enforced in a cost-effective manner, it is imperative that the bylaws are clear, specific and enforceable. Given the longstanding challenges with enforcement, and significant changes to the restaurant industry and the City's demographics since the licensing By-law was first established, a broader review of the City's licensing and zoning bylaws relating to eating establishments and nightclubs is needed to ensure fairness, safety and cost-effective enforcement.