

# **AUDITOR GENERAL'S REPORT**

## **A Review of Municipal Licensing and Standards Division's Management of Business Licences**

### **Part Three: Eating Establishments and Nightclubs**

**October 24, 2017**

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**Auditor General**



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## EXECUTIVE SUMMARY

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### **Part 3: Restaurants and nightclubs**

Our audit results are contained in three separate reports. This report, Part 3, focuses on the issue of licensed eating establishments (e.g. restaurants, cafes) potentially operating as unlicensed nightclubs.

Municipal By-law 545 regulates the licensing of businesses for the purpose of maintaining public health and safety, consumer protection and nuisance control. Among the licences that the City's Municipal Licensing and Standards Division (MLS) is responsible for are eating establishments and nightclubs.

### **Nearly 8,000 licensed eating establishments and 39 licensed nightclubs**

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

### **Nightclubs have more restrictive requirements than eating establishments**

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.

**Lack of a clear and enforceable By-law definition of "nightclub"**

Our key concern is with the lack of a clear and enforceable definition of "nightclub" in the existing licensing By-law. This hampers MLS's ability to effectively enforce the By-law to make sure licensed eating establishments are not operating as unlicensed nightclubs. To a certain extent, the issue in the By-law definition also makes it difficult for MLS to ensure the correct licence – eating establishment vs. nightclub – is issued during the licence approval process.

Our findings are summarized below:

**831 complaints against eating establishments; 91 against nightclubs in 2016**

In 2016, MLS received a total of 831 complaints from various sources against eating establishments, and 91 complaints against nightclubs. Over 50 per cent of the complaints against eating establishments were noise-related.

We reviewed a sample of these noise complaints and the eating establishments, and found that a considerable number of them advertised nightclub services and settings on their websites.

**15 eating establishments had the appearance of operating as nightclubs**

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.

**11 were inspected and/or investigated by MLS**

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.

**Most of the charges for operating illegally as nightclubs were withdrawn**

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

Towards the end of our audit, we obtained from MLS a list of 43 licensed eating establishments that had recent officer inspections and investigations relating to the issue of potentially operating as nightclubs.

**Difficulties in enforcement actions**

MLS officers indicated that it is often difficult for them to charge eating establishments for operating illegally as nightclubs due to limitations in the By-law.

**Nightclub definition in the By-law makes it impractical to enforce**

First, the By-law definition of a nightclub is problematic and makes it difficult for a MLS officer to charge an eating establishment for operating as a nightclub.

**Majority seating rule**

According to MLS staff, to determine whether an eating establishment is actually a nightclub, MLS officers must count the number of patrons and the number of seats during a site visit at the premises. For example, if there are 100 patrons and 51 seats, it cannot be deemed as a nightclub, as per By-law 545.

**Difficult for officers to count the exact number of patrons on site and the seats available**

Since patrons can come and go from an eating establishment, it is often impractical for MLS officers to count the exact number of patrons on site during their visit. Counting the number of seats can be just as challenging, particularly when some places use benches instead of individual chairs.

**Many applicant-provided information suggested business was going to be a nightclub, but an eating establishment licence was issued instead**

In a sample of applications we reviewed, the applicants indicated late operating hours (e.g. from 10 p.m. to 3 a.m.), DJs and dance floors on the premises. However, these applications were approved by MLS for an eating establishment licence, because the only relevant factors, according to the By-law definition, are the numbers of patrons and seats.

Second, the application approval process needs improvement.

When an applicant applies for a business licence for an eating establishment, they are required to provide information such as hours of operation and seating information. MLS staff review these applications and then issue licences based on the applicant's submission and the By-law provisions.

**MLS application form does not correctly ask for number of seats**

Instead of asking for the intended number of seats, the application form requires applicants to provide "seating capacity as per liquor licence". This refers to "occupancy load" in the Alcohol and Gaming Corporation of Ontario (AGCO) liquor licence. "Occupancy load" refers to the maximum capacity that is legally allowed on a premises, and is different from the number of seats to be provided on a premises.

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

It is imperative that City bylaws are clear, specific and enforceable. In a best practice guide for local governments, issued by the B.C. Office of the Ombudsperson, it states that:

*"If a bylaw is drafted in an unclear way that prevents its enforcement, or leads to inconsistent decision making, then its administration will be problematic."*

**A broader review of licensing and zoning bylaws is recommended**

In addition to the issue relating to the By-law definition, the existing By-law classifications and requirements for eating establishments were established many years ago. Given the 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 is needed.

**Conclusion**

A considerable number of eating establishments in the City appear to be operating as unlicensed nightclubs. The By-law definition of nightclub needs to be re-assessed and revised to enable practical and effective enforcement. In addition, MLS needs to ensure that it collects relevant information from applicants.

**4 audit recommendations**

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

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## BACKGROUND

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### **MLS issues and manages licensing in the City**

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.

### **Audit objective**

The objective of this audit was to assess the effectiveness and efficiency of MLS's functions in licensing businesses, and enforcement of the By-law.

### **Audit results are provided in 3 reports: MLS's licensing and enforcement, its regulation of holistic centres, and eating establishments potentially operating as unlicensed nightclubs**

Our audit results are provided in three audit reports:

Part One – provides an overall look at the effectiveness of MLS's licensing and enforcement practices.

Part Two – focuses on MLS's licensing and enforcement activities regarding holistic centres.

**Part Three – the subject of this report, focuses on licensed eating establishments potentially operating as unlicensed nightclubs.**

### **Nearly 8,000 licensed eating establishments and 39 licensed nightclubs**

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

### **Little differences in licensing fees between eating establishments and nightclubs**

Licensing fees only differ slightly between eating establishments and nightclubs.

Eating establishment: \$481 application fee and a renewal fee of \$290.

Nightclub: \$468 application fee and a renewal fee of \$282.

**Location of nightclubs are restricted by zoning**

The real differences between an eating establishment licence and a nightclub licence relate to the additional zoning restrictions on nightclubs and the much more rigorous licensing By-law requirements for nightclub operations.

**Much more rigorous Bylaw requirements for a nightclub licence**

Under the licensing By-law, businesses applying for a nightclub licence have to comply with many requirements that are not needed for an eating establishment licence.

For instance, 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.

**MLS 2017/2018 Work Plan**

MLS provided their Committee Work Plan for 2017 and 2018 to the Licensing and Standards Committee in December 2016. Included in the Work Plan was a review and modernization of Chapter 545, Licensing relating to eating establishments, nightclubs and public halls.

In its 2015 staff report "Framework for the Comprehensive Review and Modernization of Chapter 545, Licensing", MLS included a review of liquor licensing, restaurants and nightclubs as a By-law review priority.

**Councillor's concern**

In his March 2017 letter to the Chair of the Municipal Licensing and Standards Committee, Councillor Jim Karygiannis voiced his concern about licensed eating establishments operating illegally as nightclubs.



Councillor Karygiannis stated in his letter that:

*"These establishments advertise themselves as dance clubs, employing live DJ's and selling tableside bottle service which is typically found in a nightclub setting. In most cases, there is little or any food service after 11 pm, all while hundreds of patrons (likely above their allowable seating capacity) dancing to electronic music until 3 am."*

*"Unfortunately, this has become a disturbing part of life that must be endured by local area residents every weekend throughout the year."*

At its March 6, 2017, meeting, the Licensing and Standards Committee adopted a recommendation to request the Executive Director, MLS, to report to the Committee on April 18, 2017 on:

*"any enforcement activities that have occurred previously regarding this issue, and what policy changes can be made or enforcement measures can be taken to ensure that all restaurant establishments in the "nightclub moratorium area" are abiding by the provisions of their current business license, and not operating illegally through a loophole in our bylaws and lack of enforcement."*

As of October 16, 2017, we cannot find record of a staff report in response to the Committee directive.

A copy of Councillor Karygiannis' letter is available at:

<http://www.toronto.ca/legdocs/mmis/2017/ls/bgrd/backgroundfile-101673.pdf>

It is important to point out that our review of licensing of eating establishments was independent of Councillor Karygiannis' letter. Throughout the audit process, we did not contact the Councillor on this matter. During our report finalization process in September and October 2017, we identified the Councillor's letter when conducting a search of MLS staff reports pertaining to other audit areas.

We included the Councillor's letter in our report because we share the same concern raised in his letter after an independent review by our Office.

We also noted that other Councillors have expressed similar concerns in recent years.

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## AUDIT RESULTS

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This section of the report contains the findings from our audit work followed by specific recommendations.

### A. DIFFICULTIES IN ENFORCEMENT ACTIONS

When a public complaint is received, it is assigned to an enforcement officer in the form of an investigation request. Investigation requests can also be made by MLS internal staff, MLS officers who request follow-up action after their proactive inspections, councillors' requests, or requests by Toronto Public Health and other agencies.

An enforcement officer is required to record all relevant information such as the date and time the request was received on an investigation information sheet.

**831 complaints against eating establishments; 91 against nightclubs in 2016**

In 2016, MLS received a total of 831 complaints from various sources against eating establishments, and 91 complaints against nightclubs. Table 1 below provides a breakdown of the major type of complaints relating to these two licence classes in 2015 and 2016.

**Table 1: Major Type of Complaints Against Eating Establishments and Nightclubs, 2015 and 2016  
MLS Data**

Major Type of Complaints	Complaints in 2015 (No. / %)		Complaints in 2016 (No. / %)	
	<b>Eating Establishments</b>			
Noise Likely To Disturb	535	60%	434	52%
Operating Place For Refreshments Without a Licence	217	24%	236	28%
Non-Compliance With Licence Requirements	18	2%	53	6%
Operating as Nightclub Without Licence	27	3%	25	3%
Private Property Patio - No Licence Endorsement	23	3%	14	2%
Other	74	8%	69	8%
<b>Total</b>	<b>894</b>	<b>100%</b>	<b>831</b>	<b>100%</b>
<b>Entertainment Establishment/Nightclub</b>				
Noise Likely To Disturb	71	72%	66	73%
Operating as Nightclub Without Licence	22	22%	14	15%
Place For Refreshments - Owner - No Licence	0	0%	5	5%
Poor Business Practice	3	3%	1	1%
Use A Name Not Endorsed On Licence	0	0%	2	2%
Other	3	3%	3	3%
<b>Total</b>	<b>99</b>	<b>100%</b>	<b>91</b>	<b>100%</b>

**50% to 60% of eating establishment complaints were noise-related**

Between 50 and 60 per cent of all the eating establishment complaints received in 2015 and 2016 were noise-related.

**Certain eating establishments appeared to offer nightclub services**

We reviewed a sample of these noise complaints against eating establishments, and found that a considerable number of them advertised, in our view, nightclub services and settings on their websites, including DJ services, dance and music events, extensive alcoholic drink menus, late opening hours, images of large crowds of people standing, dancing and drinking.

To assess the risk of eating establishments providing nightclub services without a valid nightclub licence, we conducted a further review of a selected number of licensed eating establishments.

**Audit used keyword search to identify certain eating establishments for a further review**

We selected a number of licensed eating establishments from MLS database using keyword searches such as "bar" and "lounge". We then reviewed these establishments' advertising information on their company websites and magazine and customer reviews.

**15 eating establishments were noted**

We found 15 licensed eating establishments that had the appearance of providing nightclub services and settings on the premises, 10 of which are located in downtown Toronto.

**Web site advertisements and online reviews suggest nightclub operations**

These 15 eating establishments' Web sites 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. Some of them advertised themselves as nightclubs on their Web sites.

**Proceeded to review MLS enforcement actions on the 15 establishments**

We reviewed what kind of enforcement actions MLS had taken with respect to these 15 eating establishments.

MLS investigated or inspected 11 of them in 2016. Four had no record of inspection or investigation.

**11 were inspected and/or investigated by MLS**

Among the 11 establishments that were inspected or investigated by MLS officers, there were a considerable number of charges against them.

Table 2 lists MLS's inspection and enforcement actions for these 15 eating establishments.

**Table 2: Outcomes of Enforcement Activities for 15 Eating Establishments**

<b>Enforcement Activities</b>	<b>No. of Eating Establishments</b>	<b>Inspection/Investigation Outcomes</b>
Proactively inspected only	1	No details provided
Investigated for noise-related complaint and/or unlicensed nightclub	2	<ul style="list-style-type: none"> <li>• 1 was issued a Notice of Violation for unlicensed nightclub and subsequently cancelled by MLS.</li> <li>• Another was issued a ticket for noise issues and the decision is pending in court.</li> </ul>
Proactively inspected and investigated for Noise/nightclub-related issues	8	<ul style="list-style-type: none"> <li>• 4 premises were ticketed for operating without a nightclub licence; 3 tickets were withdrawn and one is pending. One was also ticketed and convicted of a noise violation. Another was also referred to the Licensing Tribunal for a zoning issue, and it has been adjourned sine die.</li> </ul>

Enforcement Activities	No. of Eating Establishments	Inspection/Investigation Outcomes
		<ul style="list-style-type: none"> <li>• 1 premises was given a ticket for noise violations and was convicted; it was also given one summons for noise violations and two summons for not having a nightclub licence. All three summons were withdrawn. This one was referred to the Licensing Tribunal for a noise issue, and it has been adjourned sine die.</li> <li>• 1 premises was given a summons for not having a nightclub licence. This summons is pending. It was also given two summons for unspecified reasons, and they were both cancelled.</li> <li>• 1 premises was ticketed for noise violations and convicted.</li> <li>• 1 was ticketed for noise violations and is pending.</li> </ul>
Had no inspection or investigation	4	N/A
<b>Total</b>	<b>15</b>	

**10 charged for noise violations or operating as a nightclub**

In total, MLS officers laid a total of nine tickets and six summons against 10 of the 15 eating establishments we identified.

In particular, four tickets and two summons for operating illegally as nightclubs were issued, all of which had been withdrawn except one ticket pending a court decision.

**2 referrals to Tribunal hearing for zoning and noise violations**

MLS also referred two establishments to the Toronto Licensing Tribunal for zoning violation and noise issues. Both cases were adjourned sine die.

**To date, all of them continued to operate as eating establishments**

Despite all of the enforcement actions, as of August 2017, all of the 10 businesses continued to operate as licensed eating establishments and possibly providing nightclub services.

Towards the end of our audit, we obtained from MLS a list of 43 licensed eating establishments that have been investigated for potentially operating as unlicensed nightclubs.

## B. BY-LAW LIMITATIONS LEADING TO ENFORCEMENT CHALLENGES

MLS officers indicated that, in certain cases, it is difficult for them to charge eating establishments for operating illegally as nightclubs due to limitations in the By-law.

### By-law definitions

By-law 545 defines eating establishments and nightclubs as:

#### **Eating establishment:**

*"A premises, such as restaurants, cafes and other eating and drinking establishments where food or beverages are sold and where seating is provided."*

#### **Nightclub:**

*"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."*

According to MLS staff, a key factor in proving an eating establishment is operating as an unlicensed nightclub, based on the By-law definition, is the extent of seating available for their patrons.

### Majority seating rule

The key words are "seating is not provided for the majority of the patrons" in the nightclub definition.

According to MLS staff, to determine whether an eating establishment is actually a nightclub, MLS officers must count the number of patrons and the number of seats during a site visit at the premises. For example, if there are 100 patrons and 51 seats, it cannot be deemed as a nightclub as the majority of seating is provided to patrons, according to the By-law definition.

### Difficult for officers to count the exact number of patrons on site

Since patrons can come and go from an eating establishment, it is often impractical for MLS officers to count the exact number of patrons on site during their visit. Some large establishments have multiple floors, making it difficult for MLS officers to count the number of patrons on site.

**Benches and temporary seating arrangement present another challenge**

Counting the number of seats can be just as challenging, particularly when some places use benches instead of individual chairs. Some eating establishments have temporary seating that can be adjusted as needed, such as moving/removing tables and chairs to make room for a dance floor.

**Recommendation:**

- 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.**

## **C. BETTER ASSESSMENT OF LICENCE APPLICATION**

**Applicants are required to provide operational information during licence application**

Applicants for eating establishment licences are required to complete a MLS form "Eating Establishment (B71) and Entertainment Establishment/Nightclub (B97) Applications" to provide information such as hours of operation, Ontario liquor licence number, dance facilities and occupancy levels.

MLS staff review the information on the application form to determine whether a licence should be granted or denied. According to management staff, MLS cannot mandate an applicant to apply for a specific type of licence. It only has authority to accept the application and issue a licence, or deny the application.

**Many applicant-provided information suggested business was going to be a nightclub, but an eating establishment licence was issued instead**

We reviewed a sample of completed application forms that were approved for eating establishment licences.

In a number of them, we found that the information about operating hours, dance floor, liquor licence, and occupancy level would indicate the premises could potentially operate as nightclubs.

For instance, in a number of application forms, the applicants indicated the hours of operation are from 10 p.m. to 3 a.m., and stated there would be DJ and dance floor. In our view, the information suggests that the nature of the business is likely a nightclub rather than an eating establishment.

A sample of the form is provided below in Figures 1 and 2.

Figure 1: Sample of an Application Form for a Restaurant/Nightclub (page 1)

**Eating Establishment (B71) and Entertainment Establishment / Nightclub (B97) Applications**

1) Does your establishment have a liquor licence?

Yes  No

2) Have you applied for a liquor licence?

Yes  No

3) If "Yes" – what is the seating capacity as per the liquor licence?

Number: \_\_\_\_\_

4) What is the occupancy load? 270

5) What are the hours of operation?

Monday – Thursday: 4 pm to 3 am

Friday: 4 pm to 3 am

Saturday: 4 pm to 3 am

Sunday: 4 pm to 3 am

6) Do you have a dance floor?

Yes  No

7) If "Yes", what is the square footage? 200 <sup>144</sup> sq. ft.

8) Is Seating removed to accommodate a dance floor?

Yes  No

9) If "Yes" how many seats are removed?



Figure 2: Sample of an Application Form for a Restaurant/Nightclub (page 2)

10) Do you have a DJ or any live entertainment anytime the business is operating?

Yes  No

11) If so, when / which days / nights?

Monday: depends on event  
Tuesday: \_\_\_\_\_  
Wednesday: YES  
Thursday: YES  
Friday: YES  
Saturday: YES  
Sunday: YES

12) Do you have a patio?

Yes  No

13) If so, is it on City property or private property?

City Property  Private Property

Date: \_\_\_\_\_  
Clients Signature: \_\_\_\_\_  
Application # \_\_\_\_\_

**MLS says it has no power to require an applicant to apply for a nightclub licence**

MLS management, however, indicated that they have no power to require the applicant to apply for a nightclub licence, despite the information provided by the applicant that suggests it may operate as such.

This is because the By-law definition of a nightclub is based on seating, making all other factors irrelevant when MLS considers which type of licence to issue.

Under the By-law, the definition of a nightclub hinges on the number of patrons and the number of seats on a premises. While the first factor "number of patrons" needs to be determined on site by officers, the second factor "number of seats" should normally be ascertained during a licence application process.

**MLS application form does not ask for number of seats**

Instead of asking for the intended number of seats, the MLS form requires applicants to provide "seating capacity as per liquor licence" – see Figure 1, Question #3.

"Seating capacity" is not indicated in the Alcohol and Gaming Corporation of Ontario (AGCO) liquor licence; only "occupancy load" is noted in the liquor licence. This information is already asked in Question #4 on the form.

"Occupancy load" refers to the maximum capacity that is legally allowed on a premises, and is different from the number of seats to be provided on a premises.

In almost all of sampled forms we reviewed, applicants either provided the same numbers for Questions #3 and #4 as both ask for occupancy load, or did not provide any number for Question #3.

**MLS applicant questionnaire unclear with regards to actual seating arrangements**

As a result, MLS application form does not collect the actual intended seating information on the premises.

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

**Recommendation:**

- 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.**

## **D. LACK OF FOLLOW-UP INSPECTIONS TO CONFIRM COMPLIANCE**

**Follow-up inspection to ensure compliance with licence as an interim measure**

We understand that an assessment and amendment of bylaw provisions would take time and effort. In the interim, we believe that for applicants found to have the potential for operating as unlicensed nightclubs during the licence application process, MLS should conduct follow-up inspections after the initial licence approval to confirm the business is operating in compliance with the approved licence.

### **Recommendation:**

- 3. City Council request the Executive Director, Municipal Licensing and Standards Division, to develop and implement a risk-based follow-up inspection processes 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.**

## **E. REASSESS THE EXISTING LICENSING CLASSIFICATION OF EATING ESTABLISHMENTS**

**The By-law provisions were put in place years ago**

As the existing By-law classifications and requirements for eating establishments were established many years ago, they need to be reviewed and updated in consideration of the current modes of business operations.

**Some of the requirements and classifications may need to be updated in light of the current restaurant industry**

For instance, the current provisions in the By-law do not recognize that certain businesses may operate as eating establishments during the day and change to nightclubs at night. In this case, dual licences or other options may be considered to allow these establishments to legally operate as such while meeting the regulatory requirements (e.g. noise controls).

**A broader review is recommended**

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 may be needed. Ultimately, the City needs to balance the needs of promoting business growth with community needs and consumer protection.

**Recommendation:**

- 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.**

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**CONCLUSION**

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**Bylaw definition needs to be revised**

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.

**More accurate application assessment question**

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

**4 audit recommendations**

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

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

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## AUDIT OBJECTIVES, SCOPE AND METHODOLOGY

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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 objective of this audit was to assess the effectiveness and efficiency of MLS's functions in licensing businesses, and enforcement of the By-law.

This audit covered the period from January 1, 2015, to December 31, 2016.

Our audit methodology included the following:

- A review of relevant legislation and bylaws
- Interviews with key personnel to obtain their perspectives
- A review of available written policies and procedures
- A review of prior audit reports
- Testing of administrating controls to determine if they are in accordance with the division's regulations
- A review of relevant Committee and Council minutes and reports
- Site visits
- An examination of documents and records
- An evaluation of management controls and practices

Other matters have arisen from this audit and are being followed up by the Auditor General's Office. Upon the conclusion of reviewing these matters, the Auditor General will decide whether it is necessary to report these matters to the Audit Committee.

**Compliance with generally accepted government auditing standards**

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

## **Appendix 1: Management's Response to the Auditor General's Report Entitled: "A Review of Municipal Licensing and Standards Division's Management of Business Licences – Part Three: Eating Establishments and Nightclubs"**

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**Recommendation 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.

**Management Response:**  Agree    Disagree

**Comments/Action Plan/Time Frame:**

Comments/Actions:

ML&S agrees that a review of these definitions is necessary and they will be undertaken as a part of the broader review of TMC Chapter 545, Licensing, related to Eating Establishments (Restaurants) and Nightclubs as referenced in Recommendation #4.

Timeline: Target Q1 - 2019

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**Recommendation 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.

**Management Response:**  Agree    Disagree

**Comments/Action Plan/Time Frame:**

Comments/Actions:

1) ML&S will undertake a review of its' current intake processes and the information that is collected, not limited to information regarding number of seats.

Timeline: Q4 – 2017

2) Further review of the intake processes will also occur as a part of the review of this Article in Chapter 545, Licensing.

Timeline: Q1 – 2019

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**Recommendation 3:** City Council request the Executive Director, Municipal Licensing and Standards Division, to develop and implement a risk-based follow-up inspection processes 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.

**Management Response:**  Agree     Disagree

**Comments/Action Plan/Time Frame:**

Comments/Actions:

ML&S will identify opportunities to improve the licensing review processes and in the context of new applications, identifying criteria to determine "higher risk" applications for investigation and follow-up.

Timeline: Q4 - 2017

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**Recommendation 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.

**Management Response:**  Agree     Disagree

**Comments/Action Plan/Time Frame:**

Comments/Actions:

As indicated in the response to Recommendation #1 and #2, a complete review of the TMC Chapter 545, Licensing articles that govern restaurants, eating establishments, entertainment establishments and nightclubs is required and has been identified on the ML&S policy work plan. This work will also be informed by other projects being undertaken by the City, such as that related to live music venues.

Timeline: 2019

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