Audit Committee Meeting
October 27, 2017
Agenda Items AU10.2, AU10.3, AU10.4

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

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Auditor General's Office
Integrity, Excellence and Innovation
Background

- The Municipal Licensing and Standards Division (MLS) is responsible for regulating a myriad of businesses within the City.

- Purpose of licensing:
  - Public health and safety
  - Consumer protection
  - Nuisance control
Audit objective:
To assess the effectiveness and efficiency of MLS's licensing functions and enforcement of the By-law

- Analysed 2015 and 2016 licensing data
- MLS issued and renewed over 87,000 licences in 2016
- $28.9 million from licence and permit fee revenue in 2016
Three audit reports:

MLS Audit

Part 1
Overview of MLS’s licensing and enforcement functions

Part 2
MLS’s licensing and enforcement activities regarding holistic centres

Part 3
Licensed eating establishments potentially operating as unlicensed nightclubs
Areas Where MLS Does Well

- Licence application approval process
  - Organized and consistently implemented (including all forms being properly submitted)
  - Conduct clearance inspections for new licence applications
  - Staff are, in general, well-versed in By-law requirements
Part One: Licence Issuance, Inspection and Complaint Investigation Functions
Businesses Operating Without a Valid Licence

- Website search - 18 businesses were operating without valid or up-to-date licences
  - Eleven (11) had MLS enforcement records
  - Unlicensed businesses continued to operate
  - No Standard Operating Procedure (SOP) to make sure consistent follow-up of unlicensed businesses

Recommend – review enforcement framework and strengthen efforts to ensure compliance
Proactive Inspection

- 30% of eating establishments, food stores and hair/nail salons had no inspections for 3 years or more

- By-law officers decide when and how often they should inspect businesses
  - No requirement for inspection frequency
  - No alert in MLS’s system to flag businesses that haven’t been inspected for some time
  - Some businesses had more than 10 inspections in a year while others had none

- Recommend – risk-based approach for developing inspection frequency; ongoing monitoring to ensure consistent and equitable inspection program
Investigation Requests and Complaints

- Performance standards for response time exist, but are not tracked
- Average: 53 days to close an investigation request, ranging from 0 to 627 days
- Investigation hours varied significantly for same type and outcome
  - 0.5 hour vs. 6 hours
- Significant workload differences between officers
  - Average: 105 investigations; 5 officers conducted 400
  - Central district investigated twice as many complaints as West and East districts

Recommend – Track, review and monitor efficiency of complaints handling and staff time spent
It all begins with a clear bylaw

1. Clear, specific, enforceable bylaw
2. Ability to enforce – what test must be met?
3. Investigation strategy – what evidence must be gathered?
Part Two: MLS's Licensing and Enforcement Activities Regarding Holistic Centres
# Differences Between a Holistic Centre and a Body-rub Parlour Licence

<table>
<thead>
<tr>
<th>Holistic Licence</th>
<th>Body-rub Parlour Licence</th>
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<tbody>
<tr>
<td>“…for therapeutic and wellness purposes”</td>
<td>“includes the … touching, or stimulating, by any means, of a person’s body…”</td>
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<tr>
<td>410 Licensed centres (no cap)</td>
<td>Capped at 25 body-rub parlour licences</td>
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<tr>
<td>Licence fee: $270 new licence, $148 renewal</td>
<td>Licence fee: $13,102 new licence, $12,660 renewal</td>
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<tr>
<td>No health evaluation requirement</td>
<td>Workers are subject to health evaluations to ensure they are free from communicable diseases and medically fit</td>
</tr>
<tr>
<td>May lock treatment room doors</td>
<td>Not allowed to lock doors to any rooms</td>
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A Considerable Number of Licensed Holistic Centres Appeared to be Offering Unauthorized Services

- Of 410 licensed holistic centres
  - Website searches - 107 appeared to be offering unauthorized services
    - MLS has its own list of over 100 problematic centres
  - Advertised with sexually explicit photographs and had suggestive descriptions of services such as erotic massage
- 37 of the 107 centres were charged by MLS in 2015 and 2016; total of 117 charges for various By-law violations
  - All 37 continued to operate under a holistic licence
Professional Holistic Associations (PHA)

- By-law requires all holistic practitioners to be a member of one of the City-approved PHAs
  - 37 City-approved PHAs
  - Added to the By-law in 2005 following a staff report

- Intent was to rely on accredited PHAs to govern members to ensure integrity and honesty of services

- Charge membership fees. For example, a large PHA can collect over $250,000 from initial fees, and $100,000 from annual renewal fees
Legitimacy of the 10 Largest PHAs is Questionable

- Many appear to only exist on paper - one address was for an abandoned building, another was for a cottage, and one had a P.O. Box.

- Concerns about PHA Directors
  - 1 PHA's director was convicted of an “assault”, and convicted for operating an unlicensed body-rub parlour
  - 2 other PHA directors were also convicted for operating unlicensed body-rub parlours
  - Another PHA's director was being prosecuted for illegally practising massage therapy
The By-law does not Give MLS the Tools to Regulate PHAs

- No authority to conduct background checks during PHA approval process

- No By-law provision to allow MLS to conduct inspections of PHAs after they have been approved

- No By-law provision enabling MLS to revoke the approval of a PHA or to de-recognize PHA members even when a PHA is found to be problematic
MLS’s 2014 Review and Industry Consultation

- “A review of MLS records indicate that the majority of the individuals who were issued a holistic centre and/or a holistic practitioner’s licence by the City are offering body rub services”

- A staff report was to be submitted to the Licensing and Standards Committee on how to better manage PHAs

Recommend – to re-assess the merits and practicality of relying upon PHAs as governing bodies; to undertake a comprehensive review of the existing By-law and legislative framework
Part Three: Licensed Eating Establishments Potentially Operating as Unlicensed Nightclub
### Difference Between Licensed Eating Establishments and Nightclubs

<table>
<thead>
<tr>
<th>Eating Establishment</th>
<th>Nightclub</th>
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</thead>
<tbody>
<tr>
<td>7,938 licensed eating establishments</td>
<td>39 licensed nightclubs</td>
</tr>
<tr>
<td>Licence fee: $481 new licence $290 renewal</td>
<td>Licence fee: $468 new licence $282 renewal</td>
</tr>
<tr>
<td>Not subject to the same rigorous requirements as nightclubs</td>
<td>Noise and crowd control plans 1 security guard for every 100 patrons Metal detector at entrance $2 million comprehensive insurance Located on the first storey Only 1 nightclub in a building Restricted number in certain areas</td>
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Eating Establishments Potentially Operating as Unlicensed Nightclubs

- A simple website search - 15 licensed eating establishments appeared to be operating as unlicensed nightclubs; 10 in downtown Toronto
- Of the 15, MLS investigated 10 and laid various charges in 2016, including 4 tickets and 2 summons for operating illegally as nightclubs
- All 10 continued to operate as licensed eating establishments
- 43 eating establishments in Central district identified for potentially operating as nightclubs
By-law Limitations Leading to Enforcement Challenges

➤ Key words in By-law definition of a nightclub: "seating is not provided for the majority of the patrons"

For example, if there are 100 patrons:
  49 seats = nightclub
  51 seats = not a nightclub

➤ Patrons can come and go; impractical for MLS officers to count the exact number of patrons on site

➤ Counting the number of seats can be just as challenging; some places use benches instead of individual chairs
Application Processing and Subsequent Enforcement Process Need Improvement

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? ____________________

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? ________________ sq. ft.

8) Is seating removed to accommodate a dance floor?
   ✔ Yes ☐ No

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

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: 
    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: ________________

Cllents Signature: ________________

Application #: ________________
Reassess the Existing Licensing Classification of Eating Establishments

- Existing By-law classifications and requirements were established years ago

- Need to recognize significant changes to the restaurant industry and the City’s demographics

- Balance the needs of promoting business growth with community needs and consumer protection

Recommend – a broader review of the By-law provisions and classification of eating establishments and nightclubs
Overarching Themes

- Ensuring City Bylaws are clear, specific and enforceable

- Transformation of the Licensing Program
  - MLS is faced with a large array of complex and emerging issues
  - 168 directives from City Council remain outstanding
  - MLS can leverage the vast experience and expertise of the City's new Chief Transformation Officer; risk-based, effective and efficient ways of delivering services, enhance collaborations with other divisions, and use of modern technologies