

Framework for the Review of Licensing and Zoning Regulations for Restaurants, Bars and Entertainment Venues

Date: November 23, 2021

To: Executive Committee

From: Executive Director, Municipal Licensing and Standards Division
Chief Planner and Executive Director, City Planning Division

Wards: All

SUMMARY

Current business licensing regimes and zoning regulations have not kept pace with the evolution of nighttime culture, and changing business models have blurred the lines between what is commonly taken to be a restaurant, bar, or entertainment venue. There is a need to modernize and clarify the rules to align with evolving business models, and provide flexibility and support for businesses, while ensuring an appropriate level of regulatory oversight to mitigate any potential community nuisance and public safety issues.

This report introduces a framework to update licensing and zoning regulations for restaurants, bars, and entertainment venues and provides information and next steps for upcoming consultations with stakeholders, the public, City Councillors, and partner divisions in early 2022.

The review of licensing and zoning regulations for restaurants, bars, and entertainment venues responds to a range of City Council directives related to modernizing business licensing and reducing regulatory burden on businesses, supporting public health and safety and addressing problematic establishments serving alcohol, and supporting Toronto's nighttime economy and live music venues. Notably, a 2017 report from the Auditor General also identified issues of regulatory uncertainty resulting in some eating establishments operating as unlicensed nightclubs.

Municipal Licensing and Standards (MLS) and City Planning staff began reviewing licensing and zoning regulations for restaurants, bars and entertainment venues in 2018. While this work was paused at the beginning of the COVID-19 pandemic as public health measures and provincial emergency orders limited operations of businesses in these industries, staff are restarting the review to modernize rules to support businesses, while balancing the need to address potential community nuisance

and public safety issues. Economic recovery following the pandemic, and impacts on restaurants and local areas, including active main streets, is also a relevant consideration. Staff recognize that proposed regulatory amendments must be sensitive to the current context, challenges, and the new realities facing these industries during the pandemic, and in recovery.

Staff are considering a range of proposals to update licensing and zoning regulations to address identified issues, including moving towards a licensing approach based on complexity or extent of business activities to ensure there is appropriate and proportional regulatory oversight for businesses. Staff are proposing to modify licence classes to differentiate lower impact and higher impact establishments and determine licence conditions based factors such as venue capacity, liquor service, hours of operation, and entertainment uses. This approach will allow staff to review opportunities to provide more flexibility for businesses in terms of seating, floor plans, and entertainment.

Staff will also develop clear, distinct, and enforceable licensing definitions to differentiate licence classes, and ensure zoning and licensing definitions are harmonized and consistent for ease of interpretation. Staff will also explore modifying restrictions to indoor entertainment uses in eating establishments, and expanding nightclub permissions beyond the downtown area, as well as other proposals developed through further consultations.

Following further analysis and consultation as outlined in this report, staff plan to bring forward a final report with zoning and licensing recommendations and proposed by-law amendments later in 2022. This report will also include recommendations related to addressing select problematic establishments serving alcohol for Committee and Council consideration.

The Economic Development and Culture division (EDC) was notified of the development of this report.

RECOMMENDATIONS

The Executive Director, Municipal Licensing and Standards Division, and the Chief Planner and Executive Director, City Planning Division, recommend that:

1. The Executive Committee direct the Executive Director, Municipal Licensing and Standards Division and the Chief Planner and Executive Director, City Planning Division, to report back in 2022 with final recommendations and proposed by-law amendments to modernize and clarify licensing and zoning regulations for restaurants, bars and entertainment venues, as well as recommendations related to the addressing impacts of problematic establishments.
2. The Executive Committee direct the Executive Director, Municipal Licensing and Standards Division and the Chief Planner and Executive Director, City Planning Division, in consultation with Economic Development and Culture and other divisions, as appropriate, to consult with relevant stakeholders and the public on proposed

regulatory changes for restaurants, bars, and entertainment venues, and to include a summary of these consultation efforts in the final report per Part 1 above.

FINANCIAL IMPACT

There are no current or known future year financial impacts arising from the recommendations contained in this report.

Future recommendations resulting from the review of licensing and zoning regulations for restaurants, bars and entertainment venues may have financial impacts. This will be discussed as part of the proposed final report in 2022.

The Chief Financial Officer and Treasurer has reviewed this report and agrees with the financial implications as identified in the Financial Impact section.

DECISION HISTORY

Business Licensing

On March 6, 2017, the Licensing and Standards Committee adopted Item LS17.3: Downtown Entertainment District - Enforcement of Nightclub Moratorium, requesting staff to report to the Licensing and Standards Committee on April 18, 2017 on enforcement activities regarding restaurants operating as nightclubs and nightclubs operating outside of the "nightclub moratorium area", and what policy changes or enforcement measures can be taken to address the issue.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2017.LS17.3>

On November 7, 2017, City Council adopted, with amendments, Item AU10.4: A Review of Municipal Licensing and Standards Division's Management of Business Licences - Part Three: Eating Establishments and Nightclubs, which included a report from the Auditor General identifying concerns related to the lack of a clear and enforceable definition of nightclubs, resulting in a considerable amount of eating establishments operating as unlicensed nightclubs. City Council directed staff to consult with relevant stakeholders and report back on recommendations to improve licensing categories to better reflect current nightlife, as well as ways to ensure establishments are abiding by the provisions of their current business license.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2017.AU10.4>

On January 14, 2019, the General Government and Licensing Committee adopted Item GL1.8: Comprehensive Review of Business Licensing - Update, which included an overview of work completed to date to review the Licensing By-law, as well as next steps for the planned reviews.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2019.GL1.8>

On October 29, 2019, City Council adopted, Item GL8.19: City of Toronto Municipal Code Chapter 545, Licensing By-law Updates, to address duplication of the Licensing

By-law with the Health Protection and Promotion Act, reduce regulatory burden for businesses, and enhancing the readability and consistency of the By-law.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2019.GL8.19>

Public Health and Safety & Addressing Problematic Establishments

On January 31, 2017, City Council adopted Item CD17.7: Improving Safety at Large Private Electronic Dance Music Venues, requesting staff to undertake a review of the current policies and regulatory regimes related to the operation of private electronic dance music venues and to report back with a strategy and applicable recommendations to enhance public health and safety.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2017.CD17.7>

On July 16, 2019, City Council adopted Item MM9.17: An Inspection and Enforcement Action Plan on Problematic Establishments Serving Alcohol, requesting staff to consult with the Toronto Police Service and the Alcohol and Gaming Commission of Ontario to develop and implement a cross-jurisdictional action plan to respond, manage and resolve negative community impacts created by problematic establishments serving alcohol, and to report back in the fourth quarter of 2019 on the plan's successes and needed improvements.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2019.MM9.17>

On December 17, 2019, City Council adopted Item GL10.14: Update on Cross-Jurisdictional Action Plan for Bars, Restaurants, and Nightclubs, which outlined plans to develop a cross-jurisdictional inspection and enforcement action for problematic establishments serving alcohol. City Council directed staff to continue to engage the Alcohol and Gaming Commission of Ontario and the Toronto Police Service and report back on progress of the cross-jurisdictional action plan as part of the bars, restaurants and nightclubs review in the second quarter of 2020.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2019.GL10.14>

Toronto's Nighttime Economy & Live Music Venues

On March 31, 2016, City Council adopted, with amendments, Item ED10.7: Toronto Music Strategy: An Action Plan, approving the Toronto Music Strategy: Supporting and Growing the City's Music Sector, which states that the City should consider the needs of the music community when updating or implementing new by-laws and regulations, and wherever possible adopt progressive policies introduced in other jurisdictions to address potential conflicts between music industry stakeholders and the wider public interest.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2016.ED10.7>

On February 13, 2017, the Toronto Music Industry Advisory Council adopted, with amendments, Item MA7.5: Measures to Protect Music Venues in Toronto - Update, requesting staff to consider, as part of the Council requested report on Item MM22.5, recognizing music venues independently of their primary license type; legitimizing the operation of live music venues by removing restrictions around floor space and seating; and re-evaluating "Employment Lands" zoning to identify potential new areas for music venues and entertainment.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2017.MA7.5>

On May 22, 2018, City Council adopted, with amendments, Item PG29.4: TOcore: Downtown Plan Official Plan Amendment, resulting in adoption of the Downtown Plan Official Plan Amendment. Council directed staff to undertake a review of the City-wide policies and zoning permissions related to live music venues and report back to the Planning and Growth Management Committee.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2018.PG29.4>

On July 16, 2019, City Council adopted, with amendments, Item EC6.8: Strengthening Toronto's Nighttime Economy, requesting the Mayor to appoint a member of Council as Toronto's Night Ambassador, and adopting the Toronto Nightlife Action Plan. Council requested staff to align the review of zoning and business licensing regulations, including consideration for noise, and to clarify requirements and provide support for venues regularly presenting live music, and report back in 2020.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2019.EC6.8>

On October 15, 2019, the Planning and Housing Committee adopted Item PH9.6: Live Music Venues, requesting staff to undertake a review of the business licensing requirements, Official Plan policies, and Zoning By-law permissions and definitions related to live music venues, including size, locational performance standards, and potential amendments, and consult with the Toronto Music Advisory Committee and report back with recommendations in the fourth quarter of 2020.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2019.PH9.6>

COMMENTS

City staff began reviewing licensing and zoning regulations for restaurants, bars and entertainment venues in 2018, in response to directives from City Council and recommendations from the Auditor General. This review was paused at the beginning of the COVID-19 pandemic in 2020 as public health measures and provincial emergency orders limited operations of businesses in these industries, and staff resources were also redirected to the emergency response.

Recognizing how the pandemic has negatively affected restaurants, bars and entertainment venues, the City is restarting this work and prioritizing the review of relevant licensing and zoning regulations to modernize and clarify the rules to support businesses, while balancing the need to address any community nuisance and public safety issues that may arise.

The purpose of this framework report is to report on issues that have been identified for further exploration, propose an approach to update licensing and zoning regulations, and to share information about next steps about upcoming consultations with stakeholders, the public, City Councillors, and partner divisions.

Restaurants, Bars and Entertainment Venues Review

Through Toronto Municipal Code, Chapter 545, Licensing, the City licenses Eating and Drinking Establishments and Entertainment Establishments/Nightclubs. The Eating and

Drinking Establishment licence category includes fast food restaurants, traditional table service restaurants, bars, and any other places for reception, refreshment, or entertainment of the public that also serve food. The Entertainment Establishment/ Nightclub licence category captures establishments where the main use is to provide dance facilities for patrons. The City does not have a separate licence that applies to all live music venues. Currently the City licences 7,241 restaurants, cafes, bars, pubs and other eating and drinking establishments, as well as 20 nightclubs.

Zoning regulates the appropriate location and intensity of land uses. Zoning By-law 569-2013 defines land uses such as eating establishment, nightclub, cabaret, and entertainment place of assembly that are part of this economic sector. Zoning regulations also establish parameters relating to the extent of other activities that can occur within an establishment, such as the extent of entertainment related activities, like a dance floor within an eating establishment.

Consumer demand and models of service delivery in this sector frequently evolve, emphasized recently by Toronto's experience during the pandemic. In addition to traditional restaurants, where patrons sit down to consume a meal, restaurants and bars have become places where a variety of other activities are also available to patrons (for example, dancing, entertainment and live music). Outdoor patios and hybrid designs have also become more common. Staff have heard from stakeholders that these emerging models can be a necessary business decision to make a restaurant fiscally viable. MLS and City Planning initiated a review of the Licensing By-law and Zoning By-law sections relating to restaurants, bars, and entertainment venues in recognition of these changing patterns, and the emerging grey area between restaurants and nightclubs. Other licensing categories where similar activities can sometimes take place, such as Public Halls, Billiard Halls, and Places of Amusement, are also included in this review.

In response to City Council directives asking staff to review licensing and zoning regulations for live music venues, and to develop and implement an action plan to manage problematic establishments serving alcohol, the review will also explore ways to mitigate community nuisance, support public safety, and address any impacts of restaurants, bars, and entertainment venues on adjacent areas.

The overall objectives of the review are to:

- Modernize and clarify licensing categories to better reflect the operations of these businesses across Toronto;
- Adjust zoning so businesses can better understand and comply with the rules regarding what is permitted in each area of the city;
- Streamline regulatory processes for businesses and propose greater flexibility for businesses presenting live music;
- Coordinate the zoning and modernized licence process to assist businesses and support inspection and enforcement;
- Address public safety, health and community nuisance issues to better serve businesses, customers, residents and the community; and
- Align with goals of Toronto's Music Strategy and Toronto's Nightlife Action Plan.

Comprehensive Review of Business Licensing

In 2015, MLS began modernizing business licensing operations and regulations to better reflect the current and evolving business environment, to provide tools that promote compliance, to develop efficiencies, and to reduce regulatory burden. This transition is rooted in the City's regulatory purpose of public safety and consumer protection and is intended to move the City toward a licensing regime based on complexity or extent of business activities. Under this model, licensees with a higher impact - as determined by their business activity - receive an increased level of regulatory and compliance oversight, whereas licensees with a lower impact can benefit from reduced regulatory burden.

Due to the changing nature of businesses and the number of existing business licence categories, the review of business licensing is being conducted in stages. The review of licensing and zoning requirements for restaurants, bars, and entertainment venues is an important piece of this work.

Background

Impacts of the COVID-19 Pandemic

The global COVID-19 pandemic has had severe impacts on the operation of restaurants, bars and entertainment venues, including live music performances. Public health measures and provincial emergency orders limited operations of businesses in these industries, or required them to close entirely for significant periods of time.

While many public health measures have now been lifted, and we are entering a period of recovery, it may take several years for the restaurant, bar and entertainment industries to return to the level of activity and employment seen prior to March 2020. This review must be sensitive to the current context, challenges, and the new realities facing these industries. It is important that a clear and streamlined regulatory environment is established so that new investment is not discouraged.

Summary of Council Directives

The review of licensing and zoning regulations for restaurants, bars and entertainment venues responds to a number of outstanding City Council directives, as listed in the "Decision History" section. A summary of key directives and themes is provided below.

In October 2017, the Auditor General released a report that identified the lack of a clear definition of nightclubs, resulting in a number of eating establishments potentially operating as unlicensed nightclubs. The report noted that licensing definitions should be amended to better delineate the difference between an eating establishment and a nightclub to provide clarity for businesses, as well as enforcement staff. City Council directed MLS to consult with relevant stakeholders and review licensing provisions and classifications related to eating establishments and nightclubs to identify the necessary changes to support inspections and enforcement, and better reflect current nightlife in Toronto.

In July 2019, City Council directed MLS and other divisions to develop and implement a cross-jurisdictional action plan to respond, manage and resolve any negative community impacts created by select problematic establishments serving alcohol. MLS

responded to this directive in December 2019, and was further directed to report back on progress of the cross-jurisdictional action plan as part of this review.

Between 2016 and 2019, Council also issued a number of directives to support live music venues and Toronto's nighttime economy. Council requested staff to undertake a review of business licensing requirements, Official Plan policies, and Zoning By-law permissions and definitions related to live music venues. Staff were requested to consult with the Toronto Music Advisory Committee, and to report back with potential By-law amendments to clarify requirements and provide support for venues regularly presenting live music.

The Toronto Music Strategy

City Council adopted the Toronto Music Strategy developed by the Toronto Music Advisory Committee in 2016. The Strategy supports development of export-ready Toronto artists and drives growth in tourism as Toronto becomes more recognized globally as a world-leading music city. The Strategy identifies six major strategic areas to support the music industry in Toronto, including a recommendation for the City to consider the needs of the music community when updating or implementing new by-laws and regulations, and wherever possible adopt progressive policies to address potential conflicts between music industry stakeholders and the wider public interest.

Live music performances in Toronto are often co-located in eating establishments. It is therefore important to consider existing eating establishment regulations in terms of their flexibility to accommodate ancillary or accessory entertainment uses as part of this review.

The Toronto Nightlife Action Plan

Developed in 2019, the Toronto Nightlife Action Plan outlines the scope of nightlife, and takes stock of the city's nightlife economic contribution and creative footprint. It also includes three main goals:

- Support live music, entertainment, and social culture at night that reflects the diversity of the City and enhances the global position of Toronto as a tourist destination and cultural innovator;
- Recognize and advance the importance of safety for nightlife patrons and workers, respect for residents, and sustainability of music and entertainment venues; and
- Acknowledge Toronto as a 24-hour city that harnesses the potential of the entertainment related night economy as a producer of jobs and economic growth.

A notable action of the Plan that will be addressed as part of this review is to align the review of zoning and business licensing regulations to clarify the requirements for venues regularly presenting live music.

CaféTO Program

The CaféTO program was launched in June 2020 to support restaurants and bars facing COVID-19 related indoor dining capacity restrictions by providing expanded outdoor dining space on the street and sidewalk. City Council also approved a temporary use zoning by-law which granted permission to restaurants to expand an outdoor dining space on private property without a requirement for an application with

the City. At its meeting from November 9 to 10, 2021, City Council will consider a staff report recommending that CaféTO be established as a permanent program for the City of Toronto.

Amplified sound is prohibited on Toronto patios; however, on June 8, 2021, City Council authorized a pilot to permit amplified music on CaféTO patios located in the public-right-of-way in Davenport, Toronto-Danforth and Beaches-East York within scheduled times of day and certain days of the week from August 1 to October 31, 2021. City Council expanded this pilot to include Spadina-Fort York on October 4, 2021. Any music is still subject to requirements under Chapter 591, Noise. The Music Office will be surveying stakeholders at the end of the pilot for feedback and in consultation with Municipal Licensing and Standards, will be reporting back to Economic and Community Development Committee on results.

While staff acknowledge that the CaféTO program and this review have a common goal to support the hospitality industry, at this time, the ongoing work to review and refine the CaféTO program and zoning regulations regarding patios on private property are not expected to be directly included in the scope of this review.

Research and Consultation

As directed by Council, from 2018 to 2019 staff conducted background research, analyzed the current state of licensing and zoning by-laws, and identified issues to be addressed. This work also included an analysis of data related to licensed eating and drinking establishments and nightclubs, and a review of regulations and approaches in other cities. Since restarting this review earlier this year, MLS and City Planning have worked to update and enhance this body of work to inform the proposed framework.

Identified Issues in Licensing and Zoning By-laws

Based on an analysis of the current state of the Licensing By-law (Municipal Code Chapter 545) and City-wide Zoning By-law 569-2013, MLS and City Planning have identified a number of issues and regulatory inconsistencies for restaurants, bars, and entertainment venues that will be addressed as part of this review.

Unclear Defined Terms and Uses

Many of the defined terms in the Licensing By-law related to restaurants, bars and entertainment venues are unclear, outdated, and lack clear distinctions between categories. Some licensing categories, such as Public Hall, are not defined in the By-law, while others, such as Billiard Hall, may be less relevant than in the past. Additionally, many licensing definitions do not align with zoning definitions. For example, the licensing definition for an Entertainment Establishment/Nightclub states that seating is not provided for the majority of patrons, and the zoning definition for a nightclub does not mention seating. While licensing and zoning definitions have different purposes, staff plan to ensure all defined terms work in a more coordinated fashion.

Through the Licensing By-law, the City also licences other types of entertainment and gathering venues such as Public Halls, Billiard Halls, and Places of Amusement. These uses may co-locate in an eating establishment or a bar, leading to further complexity. As an example of regulatory uncertainty, it is not clearly defined how many pool tables a

restaurant can have before transitioning from a restaurant with an accessory use of pool tables to a billiard hall with the accessory use of serving food.

Another issue identified in the Auditor General's 2017 report is that though current Licensing By-law definitions, a key factor that distinguishes an eating and drinking establishment from a nightclub is the extent of seating available for patrons. Under the By-law, nightclubs are defined as premises where "seating is not provided for the majority of the patrons". This distinction is difficult to enforce as Bylaw Enforcement Officers must count the number of patrons and the number of seats during a site visit. Since patrons can come and go, it is often impractical to count the exact number of patrons on site. Counting the number of seats can also be challenging, particularly when some establishments use benches instead of individual chairs. Some eating establishments also have temporary seating that is adjusted as needed, for example to make room for a dance floor.

The lack of a clear definitions can result in businesses not being issued the appropriate business licence (for example, eating establishments operating as nightclubs). It can also lead to enforcement challenges and may force businesses into operating in a regulatory grey zone. As part of this review, staff will develop clear definitions with distinct tests to better differentiate business types.

Attachment 1 provides a summary of relevant licensing and zoning definitions and variations.

Regulations Do Not Accurately Capture Evolving Business Models

As discussed above, current business models are evolving and in some cases may overlap several licence or zoning use definitions, or not completely meet any of the available definitions. Some examples include:

- An eating establishment that primarily operates as a traditional sit-down restaurant, but also hosts live music performances and/or dancing on select nights;
- A drinking establishment that does not offer seating;
- An eating and drinking establishment with ping-pong tables and dining tables; and
- An eating establishment that offers food service in association with other entertainment activities, where the entertainment portion of the premises is larger in interior floor area than the dining area.

It can be difficult for these businesses to know what licence category they fall under, and if they are complying with zoning regulations. Updating regulations to better capture flexible business models and better distinguish business types will provide clarity for businesses, and enable the City to enact appropriate licensing conditions.

Restrictions on Indoor Entertainment in Eating Establishments

Entertainment related uses, such as dancing, live music, DJ sets or karaoke are often co-located in restaurants and bars. Current zoning regulations state that entertainment-related uses must not exceed a maximum of six percent of the interior floor area of that eating establishment or fifty square metres (whichever is the lesser amount).

This type of zoning regulation was not found in the other jurisdictions staff reviewed as part of the background research for this report. This regulation has resulted in interpretation challenges when Bylaw Enforcement Officers visit premises to determine compliance, as determining 6 percent of the internal floor area of a premises can be difficult. Furthermore, this regulation has presented significant challenges for live music venues in supporting artists and providing safe, adequate space for performers, venue staff, and audiences. Stakeholders report ongoing issues in attempting to limit entertainment-related uses typically requiring a stage or stage area and a minimal dance floor to just six percent of their floor area.

Toronto's Nightlife Action Plan encourages the alignment of zoning and licensing requirements to add clarity to the regulations regarding live music venues. The interior floor restriction for entertainment uses in an eating establishment limits the flexibility for live music performances to occur. Staff will therefore review and modify this requirement to better support the goals of the Nightlife Action Plan.

Stakeholder Engagement

Early Engagement: 2018 and 2019

In late 2018 and early 2019, staff held meetings with select external stakeholders to identify issues and discuss potential solutions. Stakeholders included the Toronto Association of Business Improvement Areas (TABIA), the Alcohol and Gaming Commission of Ontario (AGCO), Ontario Restaurant Hotel & Motel Association (ORHMA), and business owners.

Stakeholders identified a number of issues with current licensing and zoning regulations that align with those described above. For example, stakeholders shared that existing licensing categories are not clear and do not include clear distinctions for bars and music venues. Stakeholders also commented that rules around permitted entertainment uses for licensed businesses are confusing, and that restaurants that transition to entertainment uses at certain times are a necessary business decision to make a restaurant fiscally viable. Additionally, staff heard that problematic establishments creating noise and other nuisances do not reflect the majority of establishments.

When discussing potential solutions, stakeholders were supportive of a licensing regime based on complexity or extent of business activities, and suggested that licensing and zoning by-laws should allow for flexibility around floor plan, security, and staffing.

Recent Engagement: 2021

Beginning on October 12, 2021, MLS and City Planning launched an engagement and information sharing campaign to advise stakeholders and the public about the review, and how to get involved and participate in future consultations. Staff developed a dedicated City webpage, and provided information as well as an opportunity to provide feedback to 3000 licensed business owners/operators, over 80 listserv subscribers, OHRMA, Restaurant Canada, and TABIA. Staff also shared information through social media channels, the MLS Monitor Councillor newsletter, the EDC Business Newsletter, and provided an update during an external Nighttime Economy Working Group meeting.

Stakeholders were invited to provide comments to inform this framework report by November 5, 2021. MLS and City Planning received 14 emails from a variety of

stakeholders, including owners and operators of restaurants, bars and live music venues, and residents. All feedback was reviewed to inform this report and is summarized below.

Stakeholders highlighted a number of challenges currently facing the restaurant, bar and music venue industries, including labour shortages, rising food and alcohol costs, high competition, restrictive regulations, and impacts of COVID-19. Stakeholders stressed that this review should reduce regulatory burden for businesses and that staff need to work collaboratively with the industry to find policy solutions.

Staff heard that for some businesses, operating as both a restaurant and music venue is a necessary business decision to be fiscally viable. Under current licensing regulations, music venues are often licenced as restaurants, and must choose not to comply with licensing and zoning rules to make a profit. Music venues licenced as restaurants are required to provide seating to the majority of patrons, thus reducing capacity for standing patrons at live music performances, and limiting potential profits. Staff heard that live music industry stakeholders support increased flexibility in terms of seating and floor plans, and are not supportive of any additional regulatory burdens, such as mandatory training or rigid rules for security provision.

Some stakeholders asked the City to extend operating hours for nighttime businesses to 4:00 am to support pandemic recovery, and lengthen licence terms for restaurants, bars, and live music venues.

Staff also received feedback on other issues related to restaurants, bars and entertainment venues. Both residents and business owners and operators urged the City to do more to support the hospitality and entertainment industries during COVID-19 recovery, including continuing the CaféTO program. Industry stakeholders commented that the City should reduce outdoor patio regulations and associated fees. A few residents shared concerns about allowing amplified sounds on patios due to increased noise in residential neighbourhoods. Live music stakeholders highlighted a lack of available rehearsal space in Toronto. Staff also received feedback on the need for safety standards to protect workers from COVID-19, such as mask mandates and improved ventilation.

Details about proposed stakeholder and public consultations planned for early 2022 are provided in the "Consultation Approach" section.

Jurisdictional Research

In 2018, MLS completed preliminary research on licensing approaches for restaurants, bars, and entertainment venues in select North American jurisdictions. In the summer of 2021, MLS updated and expanded this research. A parallel jurisdictional scan of zoning regulations was completed by City Planning. In total, staff reviewed regulations in fourteen cities across Canada and the United States. Findings of this research are summarized below.

Licensing Regulations

Like Toronto, some jurisdictions, including Mississauga, New York City, and Detroit, have one licence category for eating and drinking establishments that covers a broad

range of business types, including cafes, restaurants, and bars. Alternatively, many other jurisdictions have different eating and drinking establishment licence categories or subcategories that differentiate business types based on liquor service, capacity, entertainment uses, operating hours, and/or if minors are permitted. In many cases, different licence conditions are also placed on the various categories or subcategories. For example, Vancouver has different licences for liquor-primary and food-primary establishments, and subcategories based on operating hours and entertainment uses. Each of the subcategories also has various classes with different capacity limits, and progressive conditions for larger establishments, including requirements for security and first aid training for employees.

In Hamilton, under the food premise licence there are three subcategories: restaurant; restaurant with liquor; and bar/nightclub. The bar/nightclub subcategory has additional licence conditions, such as submitting noise and crowd control plans, and providing security. Notably, in San Francisco a Limited Live Performance permit is required to host live performances in establishments whose primary use is not entertainment, such as a restaurant with a piano player.

A select number of the jurisdictions reviewed, including Mississauga, Hamilton, Waterloo, San Francisco, and Nashville, have a separate entertainment establishment or nightclub licence category. In all of these cities this licence category is differentiated from an eating or drinking establishment based on the primary function being provision of entertainment and/or live or pre-recorded music. Common licence conditions include submitting noise control and crowd control plans, and having security. None of the jurisdictions reviewed has a specific licence category for venues providing live music only.

Zoning Regulations

There is consistency across jurisdictions in the zoning structure for eating establishments. Like Toronto, in many of the cities examined, it is common to require a minimum distance between a large eating establishment and a residential zone, and somewhat common to specify a maximum permitted size of the eating establishment. For nightclubs, it is also common to require a certain distance between a nightclub and a residential zone and to state a maximum permitted size of the nightclub.

A limited number of municipalities refer to alcohol sales and noise control as zoning requirements, while Toronto relies upon the Noise By-law (Chapter 591) and regulations enacted by the Alcohol and Gaming Commission of Ontario. Some municipalities, like Waterloo, require a certain distance between nightclubs.

Of the cities reviewed, the restriction for a maximum of six percent of the interior floor area of an eating establishment (up to a maximum of fifty square metres) is unique to Toronto. For nightclubs, the requirement to be located in the downtown area and on the ground floor of a building are also unique to Toronto.

Planning Policy Considerations

Provincial Planning Policy Framework

The Planning Act

Section 2 of the Planning Act sets out matters of provincial interest that the council of a municipality must have regard for when making planning decisions. Included in the list is the adequate provision of employment opportunities.

The Provincial Policy Statement (2020)

The Provincial Policy Statement (the "PPS") provides province-wide policy direction of land use planning and development matters. The PPS is issued under Section 3 of the Planning Act. All decisions of Council in respect of the exercise of any authority that affects a planning matter must be consistent with the PPS.

Policy 1.7.1 of the PPS states that long-term economic prosperity should be supported by promoting opportunities for economic development and community investment-readiness and providing opportunities for sustainable tourism development, amongst other measures.

Toronto Official Plan

The Official Plan provides for a long-term vision for future growth in the city. It includes City Council's policies and objectives for the physical development and redevelopment of the City. Section 2.1 of the Official Plan contains policies relating to the competitive position of Toronto as a business location, reflecting the diversity and strength of the broader regional economy of the Greater Toronto Area. Policy 2.1.1(j) states that Toronto will work with neighbouring municipalities, the Province of Ontario and Metrolinx to address mutual challenges and to implement the Provincial framework for dealing with growth across the GTA which improves the competitive position of the Toronto regional economy internationally and creates and sustains well-paid, stable, safe and fulfilling employment opportunities for all individuals.

Section 3.5 of the Official Plan contains a range of policies regarding Toronto's economic health and supporting improvements to the foundations of economic competitiveness. Section 3.5.1 further specifies policies relating to the creation of a strong and diverse economy, and specifically to promote the cultural sector as an important element of the economy. Policy 3.5.1.1 states several methods to nurture and expand Toronto's economy, such as maintaining a strong and diverse economic base and attracting new and expanding employment clusters that are important to Toronto's competitive advantage.

Section 3.5.2 of the Official Plan contains policies regarding the creation of cultural capital, and establishes the goal of promoting a vibrant cultural life, rich diversity and cultural expression. Policy 3.5.2.1 states that a full range of arts and cultural activities, from community-based endeavours to nationally prominent institutions, will be promoted and supported in Toronto to express the cultural diversity of its communities.

Proposed Framework to Modernize Zoning and Licensing Regulations

The proposed framework aims to provide clarity and flexibility to businesses, while balancing the need to mitigate impacts of restaurants, bars and entertainment venues on adjacent communities. A licensing approach based on complexity or extent of business activities will enable appropriate and proportional regulatory oversight. For

example, a small coffee shop that operates during regular business hours may not need the same level of oversight as a bar that operates later and mainly serves alcohol.

MLS proposes to modify and differentiate licence classes based on factors such as venue capacity, liquor service, hours of operation, and entertainment uses. This may involve creating two licence classes for restaurants, bars, and other eating and drinking establishments to differentiate lower impact and higher impact establishments. Staff will also consult with relevant stakeholders on the idea of creating a new licence category and/or class to capture bars and restaurants offering entertainment, including transitioning restaurants, and will also explore the most appropriate way to capture new live music venues. Transitioning to this new licensing model will allow staff to review opportunities to provide more flexibility for businesses in terms of seating, floor plans, and entertainment.

Additionally, staff will explore and consult on appropriate, outcome-oriented licensing requirements (such as submitting a crowd control plan) for moderate and high impact establishments and potential opportunities to streamline licensing for lower impact establishments. MLS will review licensing fees as needed to align with proposed licensing changes.

Staff will also study appropriate tests to distinguish traditional nightclubs from bars and restaurants offering entertainment (the current test is whether sitting or dancing as the primary function), as well as review current licence conditions for nightclubs. Definitions for Entertainment Establishment/Nightclubs, Places of Amusement, Billiard Hall, and Public Hall will be updated. As well, staff will ensure licensing and zoning definitions are compatible, and that all definitions are distinct, clear and enforceable by identifying key measures and characteristics to create thresholds to differentiate between business types.

City Planning proposes to examine the city-wide zoning restriction stating that no more than six percent, and up to a maximum of fifty square metres of an eating establishment is permitted to be dedicated to entertainment related uses. City Planning will also consider expanding the areas in which nightclubs are permitted to mixed use areas in the City beyond the downtown area. Staff will consider appropriate distances between nightclubs and large restaurants and residential zones. Staff will work with MLS to ensure zoning and licensing definitions are harmonized and consistent for ease of interpretation.

Staff will continue to assess which stakeholders, including equity deserving communities, may be affected by the proposed framework and will seek appropriate and meaningful engagement from those groups, as outlined in the "Consultation Approach" section below. Staff will aim to ensure that any future regulatory changes do not create barriers for equity deserving groups to obtain a business license, or to participate in activities or with in the industries included in this review.

Addressing Problematic Establishments Serving Alcohol

In July 2019, City Council directed staff to report back on an inspection and enforcement action plan for problematic establishments serving alcohol. Staff in MLS,

Toronto Building, and Toronto Fire Services were asked to develop this cross-jurisdictional action plan in consultation with the Alcohol and Gaming Commission of Ontario (AGCO) and the Toronto Police Service (TPS) to respond to, manage, and resolve negative community impacts created by problematic establishments serving alcohol. In response, MLS reported to City Council in December 2019 outlining an approach for City staff to develop an evidence-based cross-jurisdictional inspection and enforcement action plan in alignment with the Toronto Nightlife Action Plan, which seeks to strengthen Toronto's nightlife.

While development of the cross-jurisdictional inspection and enforcement action plan has been delayed as a result of the pandemic and the need to redirect City resources to emergency response and recovery efforts, MLS had continued work with the AGCO to develop a framework to further coordinate investigative and enforcement efforts, and to review existing information-sharing processes between the AGCO and City divisions, and determine where efficiencies may be possible. Staff will provide an update on this work as part of the final report back on this review.

Transitioning to a licensing regime based on complexity or extent of business activities will support compliance and effective enforcement efforts by dedicating enforcement resources to higher impact businesses. Clearer definitions and modernized licensing will also reduce instances of eating establishments operating as unlicensed nightclubs without appropriate regulatory oversight.

To further address problematic establishments, MLS will also review opportunities to include delegated authority under the Licensing By-law for the Executive Director, MLS, to be able to approve select administrative or reporting licence conditions for identified problematic businesses. These conditions would aim to address the issues being caused by a specific venue (for example, if the establishment has many noise complaints a new condition to create a noise control plan could be imposed). Problematic businesses may be defined by number of charges laid by MLS and/or convictions.

Consultation Approach

MLS and City Planning, in collaboration with the Economic Development and Culture division, and other divisions as appropriate, will consult relevant stakeholders and the public on the proposed framework to modernize and clarify licensing and zoning regulations, as well as ways to address community nuisance and public safety issues, beginning in early 2022. Stakeholders will include business owners/operators, Business Improvement Areas (BIAs), industry associations and experts, the AGCO, residential associations and the public. Staff will also consult with the Toronto Music Advisory Committee and the Nighttime Economy Working Group throughout the review.

Consultations will be a continuation and expansion of previous engagement done in 2018 and 2019. Staff will also explore opportunities to collaborate with broader nighttime economy consultations.

The consultation approach will include engagement tactics to reach equity deserving groups so they may inform and participate in meaningful engagement. Staff will also aim

to ensure that consultation activities to include business owners/operators from equity deserving communities, and industry members city-wide, including areas of the City that may not be represented by BIAs or industry organizations.

Consultations will include various events and feedback tools, including public town hall meetings, focus group meetings with industry stakeholders and business owners/operators, and online and/or telephone surveys to allow for an additional opportunity for city-wide feedback. It is anticipated that most of the consultations will be virtual; however, staff will consider in-person events if appropriate and work in accordance with public health guidelines and corporate guidance for resuming in-person public meetings and consultation activities.

Information on the upcoming consultations activities and events will be readily available on the City website. To reach a broad range of audiences, consultations will also be communicated through City of Toronto social media channels, list serve updates, newsletters, emails to licensed operators, and by leveraging communication channels from other City Divisions.

Next Steps

After further analysis and consultation as outlined in this report, staff will bring forward a final report with zoning and licensing recommendations for restaurants, bars, and entertainment venues, and proposed by-law amendments later in 2022. This report will also include recommendations related to addressing problematic establishments serving alcohol for Committee and Council consideration.

CONTACT

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ATTACHMENTS

Attachment 1: Summary of Relevant Licensing and Zoning Use Definitions and Variations