

Attachment 2: Additional Background – Related Regulations, Litter Control, and Corporate Reporting Requirements

November 2023

Related Regulations: Zoning, Food Safety, and Liquor Licensing

For a business operator to obtain a business licence from Municipal Licensing and Standards (MLS), it must comply with all other related regulations, including those set out in the City's zoning bylaws.

- **Zoning:** Zoning regulates the appropriate location and intensity of land uses. [Zoning By-law 569-2013](#) and [former general zoning bylaws](#) define land uses such as eating establishment, nightclub, cabaret, and entertainment place of assembly, which are part of the food and entertainment sector. Zoning regulations also establish parameters relating to the extent of other activities that can occur within an establishment, such as the permitted maximum area of entertainment-related activities in a premises, like a dance floor within an eating establishment. Depending on the licence category, a business operator may have to first obtain a zoning clearance to receive the appropriate business licence. This clearance, which is performed by Toronto Building, confirms that the proposed use and location are permitted under the City's zoning bylaws. Any minor variances to zoning bylaws are granted by the Committee of Adjustment, a quasi-judicial body comprised of citizen members appointed by City Council.
- **Food safety:** Toronto Public Health (TPH), through authorities laid out in the Health Protection and Promotion Action (HPPA), focuses on preventing and reducing food-borne illnesses through assessments, inspections, and enforcement of all food premises in Toronto. This is largely implemented through TPH's DineSafe program. A function of MLS' framework for licensing food businesses is to provide TPH with an inventory of businesses that serve or prepare food and that require an inspection by TPH.
- **Liquor licensing:** The Alcohol and Gaming Commission of Ontario (AGCO) is responsible for administering the Liquor Licence and Control Act, 2019 and its regulations, which establishes and enforces the licensing and regulatory regime for the sale, service, and delivery of liquor in Ontario.

Litter Control

In spring 2019, Council directed staff to review and report back on 1) education programs and enforcement levels to maintain public realm and sidewalk standards; and 2) the enforcement of regulations requiring all business licensees to install and maintain cigarette butt litter receptacles in front of their businesses and ensure that cigarette butt litter is removed from in front of their premises.

Staff initially planned on responding to these directives in a report to the General Government and Licensing committee in April 2020, but due to COVID-19, this report was delayed. To respond to these directives, staff reviewed existing Provincial and City Amendments to Chapter 545, Licensing for Bars, Restaurants, and Entertainment Venues

of Toronto regulations that apply to sidewalk litter and cigarette butts and engaged with local businesses (in January 2020). Through this research and analysis, it was determined that overlapping regulation (through the Smoke Free Ontario Act and several municipal bylaws) results in complex, and often confusing requirements. Further, recent changes to the Smoke Free Ontario Act (SFOA) now contradict some of the cigarette butt-related regulations in the Chapter 545, Licensing. This report recommends amendments to the By-law to help clarify regulations, remove conflicting requirements, and align the By-law with Chapter 709, Smoking, and the SFOA.

Overview of Regulation of Cigarette Butt Litter

Listed below are the existing Provincial and City of Toronto regulations related to smoking, cigarette butt litter, public realm maintenance, and sidewalk cleanliness:

- SFOA, prohibits smoking in all enclosed public places and workplaces, prohibits smoking in many outdoor places (patios), and sets age restrictions for purchasing tobacco;
- Chapter 709, Smoking, prohibits smoking within 9 metres of building entrances or exits;
- Chapter 545, Licensing, requires all business licensees to 1) keep public sidewalks around the establishment free of litter, including cigarette butts, and 2) install and maintain temporary cigarette butt receptacles on the pedestrian right-of-way during business operating hours;
- Chapter 743, Streets and Sidewalks, requires all property owners to maintain the adjoining boulevard free of litter and rubbish, and makes it an offence for any person to foul the street; and
- Chapter 548, Littering and Dumping, makes it an offence for any person to throw waste on any highway within the City.

Clarity for Businesses

On February 24, 2020, staff conducted Divisional and stakeholder consultations and a jurisdictional scan and identified several issues regarding the Licensing By-law's cigarette butt-related regulations for business licensees.

Feedback from both internal and external stakeholders indicated general confusion and perceived inconsistent requirements presented by various bylaws. For example, the Smoking By-law prohibits smoking and ashtrays within 9 metres of any entrance to a public building while the Licensing By-law requires licensed businesses to place cigarette butt receptacles on the sidewalk during operating hours. Although this requirement is enforceable, because the 9-metre restriction in the Smoking By-law does not apply to the public sidewalk, stakeholders noted that the placement of cigarette butt receptacles is often seen as an invitation to smoke in prohibited areas.

MLS enforcement staff also noted challenges with the requirement that business licensees maintain the sidewalk outside their businesses free of litter, as the By-law

requires that the waste/litter must be generated by patrons of the licenced business. This requires enforcement officers to demonstrate that a patron of the business that they intend to charge was the one who littered, as opposed to someone walking by.

Streamlining Regulations

During the 2020 meeting with representatives from Business Improvement Areas (BIAs), many participants raised questions regarding the intersection of bylaws such as the City's Licensing and Smoking By-laws, and the Provincial SFOA, and how the regulations apply to their businesses. Most were also unsure how the current receptacle requirement applied to businesses with less than a 9-metre storefront, or storefronts attached to residential units.

Stakeholders also identified some technical operational challenges with the requirement for temporary cigarette butt receptacles to be removed at the end of the business day. This requirement presents a problem to business operators, as they cannot store the receptacles inside their businesses as the SFOA prohibits ashtrays in all enclosed workplaces and enclosed public spaces. Additionally, there is a lack of guidance for business licensees regarding the technical specifications of an appropriate receptacle.

The City approval process for placing a cigarette butt receptacle may pose a challenge for licensees. In order to place a cigarette butt receptacle on the sidewalk outside a business, individuals must apply for a Street Occupation Permit. The application process requires owners to submit a formal application, drawings and other supporting documentation along with a fee to Transportation Services. Once the permit is granted and the receptacle is fully installed, owners must notify Transportation Services and enter into an Encroachment Agreement.

Finally, since the amendments to the City's Licensing Bylaw in 2016, changes were made to the SFOA, prohibiting smoking on patios of any restaurant or bar, including the public areas within 9 metres of the patio. Since it is illegal to have "ashtrays or similar items" where smoking is prohibited, cigarette butt receptacles may not be placed on the public sidewalk or highway surrounding a patio, as required by the Licensing Bylaw.

Proposed By-law Amendments

Staff recommend that the requirement for business licensees to maintain the sidewalk outside their business be amended to remove the requirement that waste/litter must be generated by patrons of the licensed business, as it is difficult to enforce. This amendment would retain the business licensee's responsibility to maintain the sidewalk outside their business, and tie this responsibility to their business licence, while increasing clarity and ease of enforcement by reducing the burden of proof required. Business licensees would be responsible for ensuring that the sidewalk outside their business is free of litter and waste, regardless of who left the litter and waste.

Staff also recommend that the cigarette butt receptacle requirement be removed to strengthen the general requirements relating to cigarette butt litter. The receptacle requirement is difficult for many businesses to comply with because of limited space and the need to also comply with the SFOA; removing this requirement would give business owners more flexibility in how they maintain the space outside of their premises. This freedom would allow business owners to choose an approach that is most effective for their business/property. For example, some businesses may choose to obtain a permit and attach permanent receptacles to nearby fixtures that do not impede the pedestrian right of way and comply with all smoking regulations, while others may decide to clear the area of litter throughout the day or hire a third party to do so. Deletion of this requirement would also improve clarity of the regulations. Changes to Provincial laws over time have made this receptacle requirement more and more difficult and confusing to comply with.

As well, staff note that litter is a shared responsibility under the By-law. Combined with the City's Littering and Dumping By-law, which prohibits littering onto City or private property (and make it a chargeable offence), businesses' efforts complement but do not negate the personal responsibility of an individual to not litter.

Enhancing Communications to Promote Awareness of Regulations

In addition to the proposed amendments, MLS will work collaboratively with other Divisions as appropriate to educate property and business owners on the requirements and their responsibilities to comply. This would include information on how the current regulations under the respective Smoking, Streets and Sidewalks, and Licensing By-laws and the SFOA apply to businesses. When MLS inspects licensed businesses, staff have an opportunity to clarify the regulations above and educate business licensees. Information materials will also be shared with licensed businesses at time of business application or renewal and incorporated into EDC's forthcoming Good Neighbour Guide for Late-Night Businesses.

Corporate Reporting Requirements

In the process of modernizing operations, staff have evaluated current licensing administration processes across Chapter 545. Changes have already been made operationally, and staff have found that there are opportunities to streamline corporate requirements for additional business categories to make it more consistent and to reduce administrative burden for businesses.

In 2015, Council adopted amendments to Chapter 545, Licensing (through [2015.LS4.2](#)), which allowed MLS to streamline the collection of corporate documentation for Eating or Drinking Establishments. This change sought to reduce burden on Eating or Drinking Establishment licensees by removing By-law requirements to provide corporate documentation. The proposed amendments in this report align with the 2015 changes and allow MLS to take a similar streamlined approach to reducing administrative burden on other corporate licensees (where appropriate).

Corporate Collection Requirements

Currently, corporate documentation requirements require MLS to request and maintain large amounts of paperwork from corporate and partnership licensees, including but not limited to articles of incorporation, annual returns, shareholder agreements, information on shares and share structures. These documents can be costly and burdensome for applicants to produce and take significant time to process and complete.

MLS has identified more efficient ways of obtaining this documentation by obtaining corporate profile reports, which provide the information needed to confirm compliance with Chapter 545 and can be purchased by staff at a nominal cost per unit, which would be offset by the time saved processing these documents.

Staff estimate that streamlining collection requirements, to align with 2015 changes, would reduce the amount of paperwork and costs associated with licensing and administering up to 5,000 corporate licensees. Extending the operational approaches used to assess corporate applications, similarly done for eating establishment licences since 2015, still enables MLS to maintain consumer protection and public health and safety, as staff may request documentation as needed.

Proposed Amendments

To achieve these improvements, staff recommend streamlining specific requirements for corporate documentation collection (maintained under various Articles in Chapter 545) with updated sections under general licensing provisions. These changes would introduce flexibility and reduce the documents that staff are mandated to collect and require that corporate documents be provided upon renewal if requested. As well, these changes would introduce greater consistency across licensing categories, as it aligns with changes made in 2015 for eating establishments.

The general provisions would replace the following article specific requirements: 545-165 (Filing of Incorporating document and annual returns); 545-167 (Transfer of shares); 545-329 (Application for licence by corporations); 545-330 (Application for licence by partnerships); 545-364 (Application for licence by corporations); 545-365 (Application for licence by partnerships); 545-446 (Annual returns to be filed); and 545-447(Agencies which are corporations or partnerships).

Audit and Compliance Approach

If the new provisions for general collection powers are adopted, staff will operationalize an audit and compliance approach to ensure that businesses are meeting By-law requirements. For example, staff will aim to annually audit 10 percent of corporate and partnership business licensees, including to review changes to officers and directors or changes to shareholder structure. This approach involves reviewing a combination of annual corporate profile reports and reviewing enforcement and complaint data.

Together, these changes will support operational efficiencies, enhance the consistency of the By-law, and streamline the collection of corporate documentation requirements for approximately 5,000 licensees.