

**Liquor Policy Review Report
Recommendations # 37 and #38
Industry Consultation Document
April 2016**

Background

Parliamentary Secretary John Yap's Liquor Policy Review in 2013 resulted in a report with 73 recommendations, all of which were approved in principle by the provincial government Cabinet in early 2014. To date, 41 recommendations have been implemented.

This paper individually addresses recommendations #37 and #38 and seeks input from industry stakeholders.

Issue 1: LPR # 37

Food-primary enterprises that wish to fully transition away from food service after a certain hour (e.g., 9:00 p.m.) – if, for example, they wanted to operate as a nightclub – will be able to apply for a licence endorsement, allowing them to operate like a liquor-primary licence during those hours only.

(a) Minors would not be allowed in the establishment after that time.

(b) To reflect the approach taken on liquor-primary licences, local government and residents should be consulted as part of the approval process.

The rationale for this recommendation was to address a situation problematic for both Food Primary (FP) licensees and the LCLB and potentially neighbouring residents. Since 2002, FP's have been permitted to serve liquor without the patron first ordering food or indicating they will order food. This means some patrons in an FP can simply drink liquor without ever ordering food. The licensee remains compliant with the licence class requirements provided the primary purpose of the establishment remains food service during all hours of operation. However, at certain times of the day, e.g. later in the evening, the demand from patrons for food service often decreases and it can be challenging for the licensee to remain compliant with the primary purpose requirements if they remain open for business.

This recommendation provides an option for those licensees who either are challenged to remain compliant with the FP requirements or who wish to switch the focus of their establishment from food service and prohibit minors.

Proposal

LCLB staff has reviewed this issue and support an alternate approach to reach the same end, that being the introduction of dual licensing where both an FP and a Liquor Primary (LP) licence are issued to the same establishment and footprint but operating under different hours, e.g. the FP has liquor service from 11 a.m. to 8 p.m. and the LP operates after that until closing.

A person holding an FP licence would apply for an LP licence and go through the same application process as a “standalone” LP with local government and community input. The process would be streamlined to the extent applicant suitability assessments would not be required, i.e. fit and proper and tied house, as these are already known to the LCLB given the applicant is a licensee.

LCLB believes dual licensing has the following advantages over the endorsement model:

- Likely won't require changes to local government business licensing that would arise if an establishment operating as an FP applied for an endorsement to operate like a bar. Under dual licensing two different business licences could be issued.
- It's quite possible the two operations may have different occupant loads, e.g. due to moving tables to create a dance floor, and this is easier to implement if separately licensed.
- Provides flexibility for an LP to apply for an FP during hours it wants to operate as a restaurant with unaccompanied minors. This option wouldn't be available under the endorsement option.
- Simpler to implement than the endorsement option as it does not require changes to fees or significant rewriting of regulations and processes

Implementation Timing

The initiative will be part of the complete rewrite of the Liquor Control and Licensing Act Regulations presently under way to align with the new Act. Implementation is expected in early 2017.

Issue 2: LPR # 38

Food- or liquor-primary licences should be available to other types of businesses, allowing a range of new establishments, (e.g. spas, cooking schools, and galleries) to offer liquor to their clientele as an additional service.

Under the Liquor Control and Licensing Act regulations an LP licence can be issued only to a business whose primary purpose in the establishment to be licensed is beverage service, entertainment or hospitality. The regulations also stipulate a FP licence can only be issued to a business whose primary purpose is the service of food during all hours of operation.

These restrictions limit the types of businesses eligible for licensing. It is difficult to rationalize why only these types of businesses should be eligible for liquor licensing.

Proposal

In keeping with the LPR recommendation, two changes are proposed and are addressed in more detail below:

1. Repeal the LP primary purpose requirements so other types of businesses can apply
2. Amend the FP primary purpose requirements so that is in effect only during the hours of liquor service and/or in the area licensed for liquor service

1. Repeal LP Primary Purpose Requirements

Permit other types of businesses to apply for an LP licence. In most cases, this will mean liquor service ancillary to their primary purpose. Ontario has permitted this for several years and their experience suggests there will not be a large influx of applications. As with all other licence applications, the LCLB would be obligated to address public interest/public safety concerns in deciding whether to issue a licence.

The most common expressions of interest received by the LCLB in recent years come from department stores, spas, salons, art galleries and funeral homes and these have been relatively few in number.

2. Amend the FP Primary Purpose Requirements

This amendment would permit FP licensing within other businesses under two different scenarios:

- an FP could operate in an area of a business for a limited time per day or per week but for the rest of the time the space is used for unlicensed purposes that might be unrelated to food service, e.g. a banquet hall offering educational seminars with no food or liquor service; or
- an FP could operate within a larger business, e.g. a café within an area of a book store. To some extent this is permitted now but there are detailed requirements respecting how the FP has to be physically separated from the other business. These rules could be relaxed somewhat although the licensed area will still need to be physically defined to the extent an occupant load can be determined.

Implementation Timing

Same as LPR #37 – early 2017.

Questions and Input Sought

LPR #37

1. Do you think this initiative will be of benefit to FP's in terms of compliance with the licence requirement that they be focussed on food service at all times?
2. If an FP also obtained an LP should the patron participation entertainment endorsement still be available to the FP?
3. What degree of uptake do you expect from FP's? Or from LP's applying for an FP so they can permit unaccompanied minors?

LPR #38

1. Will the removal of the primary purpose restriction for LP's meet the needs of businesses presently not eligible for licensing?
2. Do you see any significant risks in removing the LP primary purpose restriction?
3. In regard to FP's do you think this proposed change will be responsive to businesses such as cooking schools?

Your comment on these two LPR recommendations and their implementation is sought. Please try to address the questions raised in this document. If you have suggestions regarding how these recommendations could be better implemented please provide details.

Please provide your comments in writing by May 13, 2016 to the email address below and reference LPR 37 and 38 in the email subject line.

Thank you for participating in this consultation exercise. Your input is very important as it helps to develop and implement better regulations and policies.

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