

5. Re: Shops Closing Bylaw.

Appearing on the Agenda for the September 7th meeting of Council is a draft bylaw to provide for open night hours during the month of December for certain classes of shops. This bylaw was requested by Council on August 23, 1971, as a result of a submission from the Burnaby Chamber of Commerce.

Basically, what the Solicitor has done is to establish classes of shops and insert into Schedule "A" those ones which would be permitted to have "open" hours. Not having any precise direction in this area, we have tried to interpret the class of shop that Council may wish to exempt from closing restrictions during the month of December. Clause 3(b) governing these classes of shops is "permissive" and is not "mandatory".

Section 858 of the Municipal Act reads as follows:

"858. Notwithstanding the provisions of this or any other Act, every shop in a municipality shall be closed for the serving of customers during the entire day on the following days, that is to say: Christmas Day and the day immediately following, New Year's Day, Remembrance Day, the birthday, or the day fixed by Proclamation of the Governor in Council for the celebration of the birthday, of the reigning sovereign, and any day fixed by the Parliament of Canada or appointed by Proclamation of the Governor in Council for a general fast or thanksgiving or as a holiday of general application throughout Canada, and any day appointed by Proclamation or Order of the Lieutenant-Governor in Council as a holiday, and any day appointed or proclaimed as a municipal holiday under this Act."

Section 859 of the Municipal Act reads as follows:

"859. In each week of the year all shops shall be closed for the serving of customers,

- (a) on Monday, Tuesday, Thursday, and Saturday, or such four days as may be specified by bylaw of the Council, not later than six o'clock in the afternoon; and
- (b) on Wednesday, or such other one day as may be specified by bylaw of the Council, not later than twelve o'clock noon, or such later hour in the afternoon as may be specified in the bylaw; and
- (c) on Friday, or such other one day as may be specified by bylaw of the Council, not later than nine o'clock in the afternoon; and shall remain closed thereafter for the remainder of each such day."

Barber Shop hours have not been changed in that if the bylaw is passed in its present form they will have restrictive hours for December as under the present bylaw. This may present some complication where the Barber Shops are in Shopping Centers, but this situation presently exists with night shopping.

Certain classes of shops as outlined in Clause (2) of the draft bylaw are also completely exempt from the provisions of Section 858 and 859 of the Municipal Act, and this basically exempts these classes of shops from closing hours in general. This provision is presently in the existing bylaw. The definition of Shop is stated in Section 857 of the Municipal Act which reads as follows:

"857. (1) For the purposes of this Division, "shop" means any land or premises where any retail trade or business is carried on, and includes any building or portion of a building, booth, stall, or place where goods are exposed or offered for sale by retail, or where the business of a barber or hairdresser or the business of a shoe-shine stand is carried on, but does not mean

- (a) premises where a barber or hairdresser is attending a customer in the customer's residence; or
- (b) where a pharmacist is only filling a prescription of a person qualified by law to write a prescription; or

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- (c) where the only trade or business carried on is that of selling tobacco and related products, newspapers, magazines, fresh fruits, fresh vegetables, frozen fruits, frozen vegetables, cut flowers, florists' products, soft drinks, dairy products, bakery products, or any one or more of them; or
- (d) the retail sale of tobacco and related products, newspapers, magazines, fresh fruits, soft drinks, dairy products, confectionery, or any one or more of them if sold from stands operated in conjunction with a recreation, sports, entertainment or athletic business; or
- (e) an hotel, inn, public house, restaurant, or refreshment-house; or
- (f) automobile service-stations, automobile service-garages, marinas, or boat service-stations; or
- (g) premises licensed under the Government Liquor Act.

(2) The Council may by bylaw define classes of shops. "

The penalty section of the draft bylaw has increased the penalty from a possible fine of a maximum of \$100 or in default to imprisonment not exceeding 30 days to a maximum of \$500 or in default to imprisonment not exceeding 6 months. This has been recommended because \$500 is the usual summary conviction penalty and it also gives the court a wider discretion.

Attached for Council's information is a copy of the existing Shops Closing Bylaw No. 3970 which has been consolidated to include all amendments to date.

(Consolidated up to and including 5/27/77
-By-law-4673- - "BURNABY SHOPS CLOSING
BY-LAW 1953, AMENDMENT BY-LAW NO.-2,-1964")

THE CORPORATION OF THE DISTRICT OF BURNABY

BY-LAW NO. 3970

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MANAGER'S REPORT NO. 55
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A BY-LAW to regulate the closing hours of shops

WHEREAS the Municipal Council may regulate shops to the extent provided in Division (3) of Part XXVIII of the Municipal Act, Statutes of British Columbia 1957 and Amendments thereto.

NOW THEREFORE the Municipal Council of The Corporation of the District of Burnaby ENACTS as follows:

1. This By-law may be cited as "BURNABY SHOPS CLOSING BY-LAW 1958".
2. In this By-law, unless the context otherwise requires: (By-law 4047)
'BOOKSTORE' means a shop devoted exclusively to the sale of books and periodicals. (By-law 4673)
'CAMP SUPPLY STORE' means a shop dealing in camping equipment.
'CAR LOT' means a shop dealing in new or used cars, trucks or trailers or any of them.
'CORNER STORE' means a shop dealing in groceries having a shopping floor area of less than one thousand square feet, operated by a family and employing not more than one other person.
'DRUG STORE' means a shop dealing in pharmaceutical products, patent medicines, cosmetics and like products and having a registered pharmacist in attendance at all times when the shop is open for the serving of customers.
'LAUNDROMAT' means a shop providing self-service laundry facilities. (By-law 4068)
'SHOP' shall have the same meaning as set out in Section (By-law 4673) 857 of the Municipal Act.
3. For the local convenience and well-being of the residents of the Municipality, the Council does hereby exempt completely (By-law 4047)

from the provisions of Sections 858 and 859 of the Municipal Act the classes of shops more particularly defined in Section 2. (By-law 4673)

4. In each week of the year, all shops as defined in Section 857 of the Municipal Act shall be closed for the serving of customers: (By-law 4627)

(a) on Monday, Tuesday, Wednesday and Saturday of each week not later than six o'clock in the afternoon, and

(b) on Thursday and Friday not later than nine o'clock in the afternoon; and shall remain closed thereafter for the remainder of each such day.

5. Notwithstanding anything in this by-law contained, barber shops shall be closed and remain closed for the serving of customers: (By-law 4673)

(a) on Tuesday, Wednesday, Thursday, Friday and Saturday not later than six o'clock in the afternoon.

(b) on Monday for the entirety of the said day, provided that when a holiday as defined in Section 858 of the Municipal Act occurs in any week and does not fall on Monday, barber shops may remain open on Monday in that week until the hour of six o'clock in the afternoon.

~~5A. Notwithstanding anything in this by-law contained, hairdressing shops shall be closed and remain closed for the serving of customers: (By-law 4673)~~

~~(a) on Tuesday, Wednesday and Saturday not later than six o'clock in the afternoon.~~

~~(b) on Thursday and Friday not later than nine o'clock in the afternoon.~~

~~(c) on Monday for the entirety of the said day, provided that when a holiday as defined in Section 858 of the Municipal Act occurs in any week and does not fall on Monday, hairdressing shops may remain open on Monday in that week not later than six o'clock in the afternoon.~~

Repealed by By-Law 507

6. Notwithstanding anything in this by-law contained all (By-law 4673)
shops may remain open for the serving of customers until the hour of
nine o'clock in the afternoon on any or all of the seven business days
immediately preceding Christmas day, and on any day immediately pre-
ceding a holiday as defined in Section 858 of the Municipal Act when
such holiday falls on a Friday.

7. Any person found guilty of an infraction of any of the
provisions of this by-law shall be liable to a fine not exceeding one
hundred dollars or in default, to imprisonment not exceeding thirty days.

8. By-law No. 3951 is hereby repealed.

Read a first time this 26th day of June, 1958.

Read a second time this 26th day of June, 1958.

Read a third time this 26th day of June, 1958.

Reconsidered and adopted by an affirmative vote of at
least two-thirds of all the members of the Council this 28th day of
June, 1958.

(Signed) "A. H. EMMOTT"

R E E V E

(Signed) "CHARLES B. BROWN"

C L E R K