

ITEM	28
MANAGER'S REPORT NO.	87
COUNCIL MEETING	1978 12 11

Re: BARBERSHOPS
 SHOPS CLOSING BY-LAW 1958, NO. 3970
 (Item 4, Report No. 70, 1978 October 10)
 (Item 5, Report No. 80, 1978 November 14)
 (Item 15, Supplementary Report No. 82, 1978 November 20)

Appearing on the agenda for the 1978 December 11 meeting of Council are five items of correspondence regarding hours during which barbershops may remain open for business in Burnaby. These are further submissions to those that Council has already received on this matter.

Attached is a report from the Chief Licence Inspector.

Mr. Al Principe, in his letter, advises that "I would ... like to know what happened to the third reading, that was brought up last time ...". This is an inquiry which refers to the manner in which Council dealt with closing hours for barbershops in 1973 August. Following is a summary of what occurred on that occasion:

1973 August 06

Council heard several delegations and then passed the following motion:

"THAT the Shops Closing By-law be amended to allow barbershops to remain open for the same hours as other classes of shops in the municipality."

1973 August 20

Council heard two delegations and then passed the following two motions:

1. THAT the motion of Council on August 6, 1973 whereby:
 "The Shops Closing By-law be amended to allow Barber Shops to remain open for the same hours as other classes of shops in the Municipality" be reconsidered.
2. THAT the previous motion of Council as outlined above be rescinded and that no changes be made to Shops Closing By-law insofar as the operation of Barber Shops in the Municipality is concerned."

In summary, Council on 1973 August 20 clearly countermanded an earlier decision and directed that no change be made to the hours during which time barbershops could remain open.

RECOMMENDATION:

1. THAT the recommendation of the Chief Licence Inspector be adopted.

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TO: MUNICIPAL MANAGER
FROM: CHIEF LICENCE INSPECTOR
RE: SHOPS CLOSING BY-LAW - BARBERSHOPS' REPORT

1978 December 06

RECOMMENDATION:

1. THAT an amendment to the Burnaby Shops Closing By-law 1958, No. 3970 be brought down;
 - (a) to enable barbershops to be open for the serving of customers on Monday, Tuesday, Wednesday and Saturday of each week until 18:00 h and on Thursday and Friday of each week until 21:00 h, provided, however, that such shops shall be exempt from the provisions of the by-law during the entire month of December in each year.
 - (b) to define barbering and barber shops as:
 - "barbering" means the engaging in the shaving of the face or cutting or trimming or singeing of the hair or beard for hire, gain, or hope of reward, or in connection with any of the foregoing the shampooing or massaging or the treating the head or face, or in respect of any of the aforesaid the charging for any material used in connection therewith;
 - "barber-shop" means a place, room, premises, building, or part thereof where the occupation of barbering is carried on."

REPORT

At the meeting of 1978 October 10, Council received Item 4, Municipal Manager's Report No. 70, copy attached, and resolved to invite the licencees of barber-shops and other interested parties to make submissions concerning the closing hours of barbershops.

At the meeting of 1978 November 14, Council directed the Chief Licence Inspector to analyse the submissions and prepare a report for Council's consideration.

Currently, 37 barbershops are licenced to conduct business in the Municipality. These comprise of 8 one chair shops and 12 two chair shops, which for the most part are neighbourhood shops providing conventional barbering services; 4 three chair shops, 1 four chair shop and 5 shops operating between five and eight chairs, providing barbering, and in some a greater range of hair care services to men; and seven unisex shops which offer a complete range of hair care services to men and women.

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Twenty-one operators, 60% of the licencees, subscribed to a petition submitted by Local 120 of the Barbers' Union opposing any change in the operating hours of barbershops. These comprise of 7 one chair shops, 9 two chair shops, 3 three chair shops, 1 five chair shop, and one 6 chair shop. (It should be noted that the signees on the first page of the operators petition are duplicated on page 2, and that all persons who made individual submissions signed the petition also.)

Three operators made submissions in support of extending the operating hours of barbershops to include Monday, and Thursday and Friday evenings. One operator stated that several other licencees were represented by the submissions although this was not documented.

No submissions were received from the general public.

It is apparent that a majority of the licenced operators of barbershops are not in favour of changing their operating hours to those applicable to other retail shops including beauty parlours.

At the meeting of 1978 November 20, Council requested information on the following points:

1. Is it possible to differentiate sufficiently between a barbershop and a men's hairstylist salon to allow the latter type of establishment to operate the same hours as a ladies beauty salon is allowed to operate.
2. Does the management of a shopping mall, such as the Lougheed Mall, permit the operation of only one hairstylist in that particular mall.
3. Is there any contravention of the anti-discrimination legislation where men's hairstylists cannot operate under the same hours that a ladies beauty salon is permitted to do so.

With respect to Item 1, the Municipal Solicitor advises: "Pursuant to Section 861(1), Council may exempt completely from the provisions of Sections 858 and 859 any defined class or classes of shops. This is the only section which permits Council to define different kinds of shops and this power to define is only for the purpose set out in Section 861(1), i.e. to exempt completely from the provisions of Sections 858 and 859. Section 858 refers to closing on specified statutory holidays and Section 859 refers to closing hours on Monday to Saturday inclusive.

It might be difficult, if not impossible, to define hairstylist and barber in such a manner as to distinguish clearly between them. And, if there is no substantial difference between them, a by-law which permits hairstylists to be open when barber shops are closed may be subject to attack for discrimination."

The Provincial Barbers' Act provides for the examination, certification, and registration of barbers by the Barbers' Association of B. C. The spokesman for the Association advises that in their opinion any cutting of hair to a customer's direction or specification constitutes hairstyling. Further, barbers are entitled to cut both men's hair and women's hair, while hairdressers in beauty parlours are not entitled to cut hair of a male over the age of 7 years. Therefore, every barber is a licenced hairstylist.

Based on the Solicitor's opinions, and the Association's contention that every barber is a hairstylist, an attempt to define and regulate the operating hours of hairstylists would probably be futile.

With respect to Item 2, the management company of the Lougheed Mall Shopping Centre advises that merchants' leases do not provide exclusive operating rights to any classification of tenant. The Brentwood Shopping Centre is managed by the same company, and the same policy is applicable. However, in Brentwood's case, the original leases contained an exclusive rights clause, and some of these leases are still in effect.

With respect to Item 3, the local office of the Ministry of Human Rights advises that the current operating hours of barbershops are deemed not to be discriminatory. However, it should be understood that this situation has not been challenged. Consequently, an investigation that would result in a ruling being set down has not been conducted.

Additionally, the Municipal Act, Division 3, Shopping Regulations, Section 865(2) reads:

"When not contrary to provisions and intent of this Division, a by-law adopted under the authority of this Division shall not be deemed to be discriminatory."

The Solicitor has determined that this section has application relative to Section 861(2) which empowers enactment of the current by-law governing barbershop hours of operation.

The operating hours of barbershops in neighbouring areas are:

New Westminster	Closed Monday and by 17:30 h (5:30 p.m.) Tuesday to Saturday
Coquitlam	Closed Monday and by 18:00 h (6:00 p.m.) Tuesday to Saturday
Vancouver	Closed any one day between Monday and Saturday; and by 18:00 h on remaining days

NOTE: Vancouver is currently examining a proposal to repeal the regulation governing operating hours of barbershops.

It is doubtful that any action which Council is empowered to undertake is likely to resolve the apparent differences regarding operating hours which exists between those barbers who provide basic barbering services and those who engage in more extensive hair styling.

Notwithstanding that submissions were not received from the public, it appears that those barbers opposed to a change in operating hours did not address the question: "Should customers have the opportunity to obtain barbering services during the regular business hours of the community?"

In my opinion, the current regulations governing the operating hours of barbershops are outdated in that they are inconsistent with the public's shopping trends. A by-law regulating shopping hours should not deny customers the opportunity to obtain barbering services during the regular business hours of the community.

Furthermore, I believe that the by-law should not be restrictive by separating barbershops from other types of shops. The operators should have equal opportunity to fully participate in regular business hours.

It is my recommendation to amend By-law No. 3970 to permit barbershops to open on Monday, and Thursday and Friday evenings, and this would not prohibit operators from closing during these times. They would be entitled to operate at their discretion within the regular business hours applicable to other shops from Monday to Saturday, or to close on Mondays or such other day or evening as may be in the best interests of the individual operator.

Council may wish to consider the alternative of amending the by-law to retain Monday closing and permit barbershops to be open until 21:00 h on Thursday and Friday evenings.

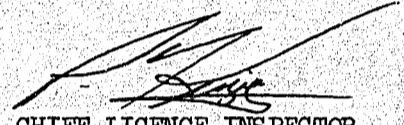
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Council may wish to consider retaining the current operating hours requiring barbershops to be closed on Monday, and by 18:00 h Tuesday to Saturday; or to retain Monday closing. In addition to whatever decision Council may arrive at in this matter, Council would be well advised to amend By-law No. 3970 to define barbering and barbershops, and for this it is recommended that the definition contained in the Barbers Act, which is as follows, be applied:

"barbering" means the engaging in the shaving of the face or cutting or trimming or singeing of the hair or beard for hire, gain, or hope of reward, or in connection with any of the foregoing the shampooing or massaging or the treating the head or face, or in respect of any of the aforesaid the charging for any material used in connection therewith;

"barbershop" means a place, room, premises, building or part thereof where the occupation of barbering is carried on."


CHIEF LICENCE INSPECTOR

PK:aa
Attach.

cc: Municipal Treasurer
Municipal Solicitor

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ITEM	4
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RE: BARBERSHOPS
SHOPS CLOSING BY-LAW 1958, NO. 3970

Following is a report from the Chief Licence Inspector regarding provisions that regulate the hours during which barbershops may remain open for business in Burnaby.

RECOMMENDATION:

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1. THAT licencees of barbershops and other interested parties be invited to make submissions to Council on closing hours for barbershops at a special meeting to be held on Tuesday, 1978 November 14, with the understanding that an assessment to follow will determine if the Burnaby Shops Closing By-Law 1958, No. 3970 should be amended to permit barbershops to be open during the same hours that other retail shops are open for the serving of customers.

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TO: MUNICIPAL MANAGER
FROM: CHIEF LICENCE INSPECTOR
RE: SHOPS CLOSING BY-LAW - BARBERSHOPS

1978 OCTOBER 03

RECOMMENDATION:

1. THAT Council consider bringing down an amendment to the Burnaby Shops Closing By-law 1958, No. 3970, to enable barbershops to be open for the serving of customers during the hours that other retail shops may be open. However, before bringing down such amendment, invite the licencees of barbershops and other interested parties to make submissions to Council, for the meeting of 1978 November 14, regarding their closing hours.

REPORT

The Burnaby Shops Closing By-law 1958, No. 3970, Section 5, provides closing hours for barbershops. These hours differ from the closing hours for other retail shops and similar personal services, such as beauty parlors, that are required to be closed by 18:00 h on Monday, Tuesday, Wednesday and Saturday, and by 21:00 h on Thursday and Friday.

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Section 5 of the By-law reads:

"Notwithstanding anything in this by-law contained, barbershops shall be closed, and remain closed, for the serving of customers:

- (a) on Tuesday, Wednesday, Thursday, Friday, and Saturday not later than 18:00 h,
- (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, barbershops may remain open on Monday in that week until the hour of 18:00 h."

Additionally, barbershops may remain open for the serving of customers until 21:00 h on the seven business days preceeding Christmas Day, and on a Thursday if the following Friday is a statutory holiday. Other retail shops are exempt from closing regulations during the month of December except for Christmas Day and Boxing Day.

Recently, a charge against a barbershop operator for being open for the serving of customers on Monday was dismissed in court. In reasons for judgement of the dismissal, the judge stated that the facts were not in dispute: that is, the evidence proved that the barbershop was open for the serving of customers on a Monday. However, the by-law does not define barbering or barbershops, therefore it had not been proven that an offence had been committed. The charge was initiated as a result of complaints registered by local barbers and the Barbers' Union concerning a barbershop operating in the Lougheed Mall shopping center.

Based on this decision, further action to enforce the current provisions of the by-law regarding barbershops would probably be futile.

We have reviewed our position with the Municipal Solicitor and he advises:

..."I do not agree with the ruling of the Provincial Court Judge that the by-law requires a definition of barber shop. The by-law does include definitions of many shops but those definitions are included pursuant to section 861 of the Municipal Act which permits Council to exempt completely from sections 858 and 859 any defined class or classes of shops. In no other section under Division (3) of Part XXVII of the Act is Council granted the power to define shops and section 861(2) refers to barber shops and hairdressing shops without definition. In my opinion, the dictionary definition of barber shop is quite adequate and could have been used by the Provincial Court Judge if he wished to. As a prosecutor pointed out, there are definitions of barber shop and hairdressing shop in other Provincial statutes."

For Council's information, Section 857 of the Act defines "shop" to mean any land or premises where any retail trade or business is carried on, including the business of a barber or hairdresser. Section 858 deals with the closing of shops on statutory holidays, and Section 859 deals with the general closing hours for shops. Section 861 reads:

"861. (1) For the local convenience and well-being of the residents of a municipality, the Council may by by-law exempt completely from the provisions of sections 858 and 859 any defined class or classes of shops.

(2) Notwithstanding section 859, the Council may by by-law provide that barber-shops or hairdressing-shops, or both, shall be closed and remain closed for the serving of customers at a specified hour on five specified days of each week and shall be closed for the entirety of a specified day of each week for the serving of customers."

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Therefore, barbershops may be included in the general closing regulations applicable to shops, or exempt completely from closing regulations, or governed by specific regulations. Under the first and second options barbershops could be open or closed on Monday, and Thursday and Friday evenings at the operator's discretion. The third option represents the current provisions of By-law 3970.

Historically, barbershop closing hours reflect the wishes of the operators. In this regard, the by-law was reviewed by Council in 1973. Up to that time both barbershops and beauty parlors were required to be closed on Mondays, and by 18:00 h on Thursday and Friday. Prosecution of the operators of two beauty parlors resulted in a request to amend the by-law to permit both categories to be open for business during the same hours as other retail shops. An amending by-law was given initial reading, however, the barbers opposed the change of hours and petitioned Council to delete them from the amendment. Council acceded to their request and the barbers continue with their present closing hours, which were enacted in 1958.

During the past several years, changing hair styles for men have created demands for an increasing range of services. These changes have resulted in the development of "hairstyling shops" which generally implies a barbershop providing a greater variety of services, such as washing, styling, tinting, curling, and similar treatment for men, and "unisex shops" which generally denotes a shop providing a full range of hair care services to both men and women. Many of these services require much more time to perform than conventional mens' haircuts, therefore an appointment in advance is generally necessary.

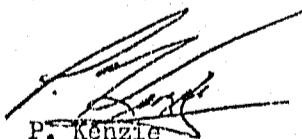
It should be noted that operators providing a combination of beauty parlor and barbering services are required to obtain a business licence for each category. Also, the barbering service is required to comply with current barbershop closing hours under the by-law.

It is generally the policy of shopping mall or plaza management groups that the full range of services provided in such facilities shall be available to the public for the same hours of operation. This, of course, is for the convenience of the public. Under these circumstances, barbershop operators may find themselves in a difficult position between the by-law and their landlord regarding Monday, and Thursday and Friday evenings.

Enforcement of the by-law is difficult because it prohibits men from obtaining service such as haircuts on Mondays, and Thursday and Friday evenings; times when women may obtain the same service, perhaps by the same barber using the same methods and equipment.

In my opinion, the operating hours of barbershops should not separate them from other types of shops. The operators should have the opportunity to fully participate in the regular business hours of the community, and customers should have the right to obtain service during such hours.

Therefore, it is recommended the By-law No. 3970 be amended to enable barbershops to be open for the serving of customers during the hours that the retail shops may be open. However, before an amendment is enacted, the licencees of barbershops should be given the opportunity to make submissions concerning their closing hours.


P. Kenzie
CHIEF LICENCE INSPECTOR

FK:aa

cc: Municipal Treasurer
Municipal Solicitor