

FILE: 1911

THE CORPORATION OF THE DISTRICT OF BURNABY

TO MEMBERS OF THE MUNICIPAL COUNCIL:

Madam and Gentlemen:

Re: Shop Closing Hours

There has been interest expressed during 1979 and recently by store operators, the Chamber of Commerce and the general public in extended shopping hours in Burnaby.

This report is presented to Council so there can be considered a By-law to provide that Burnaby's shopping hours will conform with those of Coquitlam, New Westminster, Richmond, Surrey and Delta.

The following is a brief summary of the legal requirements regarding the hours in which shops shall be closed:

(A) Lord's Day Act

The "Lord's Day Act", a Federal statute, provides generally that it is unlawful to carry on any business on Sunday except as may come within the exemption provided.

In that Act, it provides generally that it is unlawful to carry on any business on Sunday except such as may come within the exemption provided, namely, works of necessity or mercy. The Provincial Legislature may provide exceptions to the "Lord's Day Act" but there is no legislation in British Columbia to do so except in the realm of theatre and sports presentations, etc.

Sunday shopping is subject to prosecution under the "Lord's Day Act" but such prosecution should not take place without the consent of the Attorney-General. In recent years, the Attorney-General has been reluctant to give his consent and in fact has refused to give it.

The present Burnaby by-law makes no reference whatsoever to carrying on business on Sunday, nor is it intended that any new by-law do so.

(B) Municipal Act

The provisions of the B.C. "Municipal Act" dealing with shops regulations are contained in Division 3 of Part 27 therein. The provisions may be summarized as follows:

- (i) "The "Municipal Act" does not give Council general power to regulate the hours when shops must be closed for the serving of customers, which consequently means that Council's power is restricted by the Act.
- (ii) The closing hours in Burnaby have been set using the following:
 - (a) Section 858 requires closing on specified statutory holidays.

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- (b) Section 859 requires closing at specified hours on six days of the week, as follows:
- Section 859(a) provides that shops must be closed on four days not later than 6 p.m. In Burnaby, these days are Monday, Tuesday, Wednesday and Saturday.
 - Section 859(b) permits the closing on one day at 9 p.m. which in Burnaby is on Thursdays.
 - Section 859(c) provides that shops be closed not later than 9 p.m. Friday.

- (iii) Section 861 provides that for the local convenience and well-being of the municipality Council may exempt completely from the provisions of Section 859 a defined class or classes of shops.

Section 861 is generally understood to provide that an exemption by-law passed pursuant to that Section can provide for a class of businesses to be not subject to closing-hour regulations.

The Municipal Solicitor suggests that Section 861 should not be interpreted to mean that Council could provide for 9 p.m. closing on Wednesday in addition to the extended closing hours set under Section 859.

- (iv) Under Section 865(1), Council has exempted every possible class of shops from the provisions of the Shops Closing By-law for the month of December each year.
- (v) The "Municipal Act" does not refer to Sunday shop hours since the Federal "Lord's Day Act" deals with "Sunday observance".

(C) GENERAL

The Solicitor advises Council can only extend shopping hours to 9 p.m. on Wednesday by using Section 861 of the "Municipal Act" and thereby exempting shops completely from the shops closing regulations (except Sundays).

In adjacent municipalities, viz. Coquitlam, New Westminster, Richmond, Surrey and Delta, Councils have used Section 861 to exempt every possible class of shops from the shops closing provisions of a by-law under Section 859 (Sundays excepted).

In these municipalities a shop may remain open for such hours and on such days as it pleases.

There is something illogical about the Section 859(a) (b) and (c) restrictions when coupled with the Section 861 ability for total exemptions and the Section 865(1) exemptions.

While there are various interpretations of Section 861, it is not known if a partial exemption has been attempted using that section and if so whether such use has been challenged. It is not suggested this approach be considered at this time.

There is absolutely no logic to the present law which determines that a certain hour on a certain day is the appropriate hour to shop.

With the current life-style we note many family units with both family heads working, or the single parent with dependents, working during the day or shiftwork.

The market place is the deciding factor and the impact of this by-law can be readily determined by reference to the surrounding municipality.

We are in the position to provide the greatest convenience to the greatest number of shoppers.

Respectfully submitted,



David M. Mercier,
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