

ITEM 1
MANAGER'S REPORT NO. 17
COUNCIL MEETING 90/03/05

RE: LETTER FROM MR. A. PAUL WHICH APPEARED ON THE AGENDA FOR THE
FEBRUARY 19TH MEETING OF COUNCIL (ITEM 17)
NOISE DISTURBANCES FROM COCONUTS NIGHTCLUB, 7012 RANDOLPH AVENUE

ACTING MUNICIPAL MANAGER'S RECOMMENDATION:

1. THAT the recommendation of the Chief Public Health Inspector be adopted.

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TO: ACTING MUNICIPAL MANAGER 1990 FEBRUARY 27
FROM: CHIEF PUBLIC HEALTH INSPECTOR
SUBJECT: NOISE DISTURBANCES FROM COCONUTS NIGHTCLUB
7012 RANDOLPH AVENUE
PURPOSE: TO PROVIDE COUNCIL WITH INFORMATION ON THE ACTION TAKEN
BY THE MANAGEMENT OF COCONUTS NIGHTCLUB TO MITIGATE NOISE
DISTURBANCES TO THE NEARBY RESIDENTIAL COMMUNITY

RECOMMENDATION:

1. THAT a copy of this report be forwarded to:
 - a) Mr. A. Paul, #101 - 6189 Kingsway, Burnaby, B.C., V5J 5B8.
 - b) Coconuts Nightclub, 7012 Randolph Avenue, Burnaby, B.C., V5J 4W6.
 - c) Provincial Liquor Control and Licensing Branch, #217 - 1899 Willingdon Avenue., Burnaby, B.C., V5C 5T1.

REPORT

1.0 BACKGROUND:

This report is in response to correspondence dated 1990 February 12 to the Mayor and Council from Mr. A. Paul, Manager of Kingsview Apartments, 6189 Kingsway. Mr. Paul's correspondence refers to continued noise disturbances from amplified music and patrons exiting from Coconuts Nightclub, 7012 Randolph Avenue.

The Environmental Health Division has been actively investigating the operation of Coconuts Nightclub due to complaints from Mr. Paul and a number of tenants of the Kingsview Apartments. The amplified music within Coconuts Nightclub is causing a vibration to those apartments within the Kingsview complex that face this nightclub. The vibration effect is causing a disturbance to the tenants peace, rest and enjoyment of their residential complex.

During December of 1989, this Division attempted to charge Coconuts Nightclub under the general nuisance section of the Burnaby Noise Bylaw. The Provincial Ministry of Attorney General, Administrative Crown Counsel advised that as the Noise Bylaw does not include vibration restrictions, charges would not be approved.

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On 1989 December 11, the owners of Coconuts Nightclub met with representatives of the R.C.M.P., Finance Department and the Environmental Health Division and were asked to attend to the problems of vibration to the nearby Kingsview Apartments and noise disturbances from patrons exiting the premises. Agreement was reached during this meeting for the Coconuts Nightclub to have an acoustical consultant identify the noise abatement options for eliminating the vibration to the Kingsview Apartment complex.

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On 1989 December 18, the Provincial Liquor Control and Licensing Branch advised that they were in receipt of an application from Coconuts Nightclub for permission to increase their seating capacity from 225 to 350 for a New Year's Eve event. Taking into consideration a negative recommendation from the Environmental Health Division, the Provincial Liquor Control and Licensing Branch denied permission to Coconuts Nightclub for a temporary increase in seating capacity.

2.0 CURRENT STATUS:

On 1990 February 23, the owners of Coconuts Nightclub met with the Environmental Health Division and Finance Department and discussed their acoustical consultants findings.

Coconuts Nightclub has committed to do the following in order to eliminate disturbances to the nearby Kingsview Apartment complex.

Immediate installation of a low frequency filter and volume control to eliminate the vibration effect on Kingsview Apartments and additional surveillance of their parking areas during closure times.

3.0 TAX AND LICENCE DIRECTOR'S COMMENTS:

In response to Council's question about the ability of the municipality to cancel a Business Licence, the Tax & Licence Director advises that the Municipal Act empowers Council to revoke a licence for "reasonable cause" after giving notice and an opportunity to be heard to the licensee. The avenue of appeal for the licensee if Council revokes a Business Licence is through the courts. Therefore the revoking of a licence for "reasonable cause" must be defensible in this context.

In that it is difficult to define "reasonable cause", the guidelines for revoking a licence are considered an extension of the circumstances under which the Tax & Licence Director can suspend a licence. Section 513(1) of the Municipal Act specifies that a Business Licence can be suspended for a defined period of time if the licensee:

- is convicted of an offense indictable in Canada
- is convicted of an offense under any municipal bylaw or Provincial statute that is related to his business or premises
- has been guilty of such gross misconduct in relation to this business that a suspension is warranted
- has ceased to meet the legal or lawful requirements to carry on the business for which he is licensed
- has conducted his business in a manner that may be dangerous or harmful to the health and safety of a person under 16 years of age.

In the case of Coconuts Nightclub, the type of complaints we have received are similar to those registered against other nightclubs operating in Burnaby. They relate to noise and the actions of patrons once they leave the nightclub. While we are concerned about the behavior of patrons leaving the premises, a patron's behavior under these circumstances would not appear to equate to gross misconduct on the part of the licensee.

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In addition, the licensee has not been convicted of any offense, nor convicted of contravening any municipal bylaw. As a result, it does not appear that there is justification, or reasonable cause to revoke their Business Licence.

In response to Council's question pertaining to a reduction of Coconuts' hours of operation, the Cabaret Bylaw presently specifies that a nightclub may remain open until 2:00 a.m. each day of the week, and shall close at 1:00 a.m. on Sunday and remain closed until 7:00 a.m. Monday.

This clause is not enforced as the Provincial Government has issued a liquor licence that permits Coconuts to operate until 2:00 a.m. each day of the week, and until midnight on Sunday. They are then permitted an additional half hour to clear tables.

The Liquor Control Branch takes the position that the hours of operation contained in their Provincial regulations supersede any hours of operation the municipality may impose. They will consider a resolution from Council requesting a reduction in Coconuts' hours of operation.

4.0 FURTHER ACTION:

The Environmental Health Division will be actively monitoring the operation of Coconuts Nightclub operation to determine if they have eliminated the disturbances of vibration and patron noise to the tenants of Kingsview Apartments.

Should the disturbances continue after 1990 March 25, a further report will be submitted for Council's consideration which will discuss the following enforcement options:

- amending the Burnaby Noise Bylaw to include a section covering disturbances from vibration.
- taking action to implement hours of operation:
the Municipal Solicitor is reviewing the Liquor Control Branch's legislation to determine if the hours of operation set by the Provincial Government takes precedence over municipal regulations.
- requesting the Provincial Liquor Control and Licensing Branch amend the hours of operation contained in Coconuts' liquor licence.

This report has been discussed with Mrs. A. Paul, Kingsview Apartments.

George V. Harvie

G.V. Harvie, C.P.H.I.(C)
CHIEF PUBLIC HEALTH INSPECTOR

GVH/gI

cc: Medical Health Officer
Director Administrative &
Community Services
Tax & Licence Director
R.C.M.P.

