

TO: CITY MANAGER

1998 MAY 6

FROM: DIRECTOR PLANNING AND BUILDING

OUR FILE: 17.812

SUBJECT: PROVINCE'S INTERIM FRAMEWORK FOR GAMING

PURPOSE: To provide Council with an overview of the Provincial Government's recently-announced interim framework for gaming and any implications it may have for Burnaby.

RECOMMENDATION:

1. THAT Council receive this report for information.

REPORT

1.0 BACKGROUND

At its meeting of 1998 April 20, Council considered a letter from M. Farnworth, Minister of Employment and Investment. The letter outlined the provincial government's response to a January 1998 Supreme Court decision which rendered invalid the method implemented by the Province in 1997 to collect and distribute charitable gaming revenue. The letter described an interim gaming framework for British Columbia, which will govern gaming in British Columbia for the next twelve months while a new provincial Gaming Act is being developed.

Council requested staff to prepare a report evaluating the interim framework and identifying implications for Burnaby's recent Zoning Bylaw amendments pertaining to slot machines. This report responds to that request.

2.0 THE INTERIM FRAMEWORK

2.1 Legal Context

In 1997, as part of its new gaming policy, the Province enacted the *Gaming Proceeds Distribution Regulation*. The regulation outlined a method for sharing charity gaming revenues between licensed charities and the Provincial government.

In 1997 December, the Nanaimo Community Bingo Association (NCBA) filed a petition in the Supreme Court of British Columbia against the Province.

The Association was seeking a declaration that the *Gaming Proceeds Distribution Regulation* is ultra vires provincial jurisdiction, and that the Province cannot itself receive - or authorize "for-profit" companies to receive - proceeds from gaming which is managed and conducted by charitable organizations.

In 1998 January, the Supreme Court found for the NCBA, declaring the regulatory foundation for the distribution of gaming revenue invalid. The decision gave clear direction that all proceeds from charitable gaming, after the payment of prizes and reasonable operating expenses, must be retained by charities.

The Court's decision necessitated quick action by the Province in order to ensure that public gaming revenue would continue to be available to support both charitable work *and* the provincial government's own social program priorities. The Province immediately established a review process, under the leadership of Frank Rhodes, to recommend an interim framework for charitable gaming and to study means of establishing a more viable legal foundation for future gaming activities in British Columbia.

Rhodes's report, *Gaming Policy Recommendations*, was released in March 1998. On April 9, 1998, the Province announced an interim framework and a longer-term review process intended to culminate in the introduction of a provincial Gaming Act in 1999.

2.2 Objectives

The interim framework for gaming in British Columbia strives to achieve the following objectives:

- ▶ to address the legal issues raised in the Supreme Court's decision
- ▶ to provide continuing access for charities to gaming revenues
- ▶ to achieve revenue generation for the Province's Consolidated Revenue Fund
- ▶ to recognize and support the role of the professional commercial gaming industry

2.3 Essential Element: Separation of Casino and Bingo Gaming

The main element of the interim framework is the separation of casino gaming and bingo gaming, which will now be conducted under different sections of the Criminal Code of Canada. Under the new model, all casino table games as well as electronic gaming (slot machines and electronic and linked bingo) will be managed and conducted by the Province (through the B.C. Lottery Corporation) under the authority of Section 207(1)(a) of the Criminal Code. This section allows for provincial

governments to conduct and manage gaming activities - in fact the Code specifies that *only* a provincial government or its agent can conduct and manage *electronic gaming*. Previously, the responsibility for managing and conducting casino table games lay with charities licensed on a short-term basis by the B.C. Gaming Commission. Casino table games will no longer be considered charitable gaming and charities will no longer be required to provide volunteers in casinos. Section 207(1)(a) gaming activities will continue to be serviced by commercial operators under operating agreements with the Province.

Bingo activity (except for electronic and linked bingo), ticket raffles, and social occasion gaming (wheels of fortune, games at exhibitions, etc.) will be conducted as charitable gaming under the authority of Section 207(1)(b) of the Criminal Code. This section allows provincial governments to license charitable and religious organizations to conduct and manage gaming activities provided that the proceeds are used for charitable or religious purposes. As in the past, these gaming activities will be conducted and managed by volunteers of charities licensed by the B.C. Gaming Commission, and be operated by commercial or charity-managed halls.

2.4 Revenue Distribution

Under the interim framework, charitable organizations in British Columbia will be guaranteed \$125 million in revenue in 1998/99, up from the \$118 million guaranteed in 1997/98. The \$125 million in this guaranteed revenue pool will flow from two sources:

- ▶ net revenue from the charitable gaming activities conducted under Section 207(1)(b), as well as net revenue from electronic and linked bingo (conducted by the B.C. Lottery Corporation under Section 207(1)(a))
- ▶ a charitable trust funded by slot machine and casino table game revenues. The trust will disburse funds in an amount necessary to achieve the guarantee to charities. Thus with net revenues from the various types of bingo activities expected to total \$86 million in 1998/99, the amount provided from the trust in that fiscal year to achieve the guarantee would total \$39 million.

If this model for revenue distribution is maintained in the long-term, the \$125 million will be indexed annually. Ultimately, it is expected that charities will be guaranteed one-third of the net revenue from gaming activities in the province (assuming that one-third exceeds \$125 million), with the remaining two-thirds of the net revenue flowing into the Province's Consolidated Revenue Fund from which it will fund education and health services.

Charities will apply for access to gaming revenue through the B.C. Gaming Commission. As in the past, the Commission will determine each charity's access to gaming funds based on its demonstrated need, intended use for the funds, and community support for the charity's programs. However, whereas in the past, the Commission licensed a charity for a specific number of casino or bingo nights in order to earn the funds, the Commission will now either license a charity for paper bingo (or ticket raffles and other social occasion gaming events) or authorize direct access to the trust fund. Charities participating in charity bingo events will receive a portion of the monthly net revenue realized at the facility in which their event took place; charities not participating in actual events will draw from the trust fund. The B.C. Gaming Commission will continue to monitor the charities' use of allocated funds.

3.0 IMPLICATIONS

3.1 For Municipalities

With the B.C. Lottery Corporation now responsible for managing and conducting casino table games, the relationship between the provincial government and casino management companies and operators has changed. To date, it has been very difficult to obtain information from the Province as to the specific nature and form of the new relationship. Staff have been told that the Province will not purchase casinos in the province from current owners/operators, but may lease them from them. Staffing for casinos will continue to be provided by the management companies. Existing operating agreements between the Province and the owner/operators will be likely be modified to place more restrictions on the owner/operators.

Until the precise nature of the new relationship becomes clear, it is very difficult to assess the implications for Burnaby's new bylaws regulating slot machines and Burnaby's Zoning Bylaw in general. However, both the City Solicitor and staff at the UBCM have expressed concerns about the City's ability to regulate the activities of the Province (or its agent, the B.C. Lottery Corporation). In fact, Minister Farnworth's letter to the Mayor and Council notes that the new scheme "may have implications for the application of municipal zoning powers". This could include the regulation of slot machines, as recently enacted in Burnaby through an amendment to the Zoning Bylaw and, perhaps, the locational stipulations inherent in the Zoning Bylaw. Regarding the latter, the City did receive a letter from the Lotteries Advisory Committee in 1997 December acknowledging the City's zoning powers. However,

the Solicitor advises that, depending on the nature of the B.C. Lottery Corporation's new relationship to casinos, the Province could be exempt from the operation of municipal bylaws insofar as those bylaws affect the Province's use or development of land or improvements. The Solicitor also advises that casino properties will remain fully taxable by the City unless the Province actually acquires title to them. As noted above, the Province is not intending to do so.

The April announcement did not identify any changes to the Province's plans for slot machines, and the Minister has indicated to the UBCM that the Province is proceeding with full implementation of the slot machine program in all existing casinos in British Columbia. Projected slot machine revenues constitute a major source of funds under Section 207(1)(a) gaming activities, and the charity trust discussed above is only achievable and sustainable if projected revenues are realized.

The UBCM has long supported the development of a provincial Gaming Act, and has communicated to the Province its support for and conditional participation in the forthcoming review. The UBCM's Gaming Subcommittee has discussed the new gaming framework and raised a number of concerns and/or queries in addition to those pertaining to the application of zoning powers. Those additional concerns/queries focus on the extent of the current expansion of gaming, the relationship between First Nations people and neighbouring municipalities with respect to gaming, and the ability of municipalities to tax individual slot machines.

3.2 For the Recent "Request for Proposals"

Provincial staff have indicated that the new framework will not have an impact on decisions about new casinos and/or bingo halls which may be established in Burnaby. However, as mentioned above, until the relationship of the B.C. Lottery Corporation to casinos is clarified, it is difficult to assess whether the province could be immune to city bylaws affecting the use of casino lands. While the Province had anticipated making announcements about new casino and bingo hall licenses in early spring 1998, staff understand that those announcements will now likely be made in June.

3.3 For Charities

Some charities, particularly those which rely on bingo revenue and those which have found it difficult to rally and co-ordinate volunteers for gaming events, have indicated support for the new framework. Many, however, have expressed concerns about government taking over the operation of casinos and the direct distribution of some gaming revenues to charities. Some of the concerns expressed by charities include:

- ▶ uncertainty of income. Government priorities and the government's overall financial situation are subject to fluctuation. Provincial control of gaming may increase provincial administration costs, thereby reducing funds available for charities. Unless charity rights are entrenched in legislation, the revenue guarantee established by the Province may not be respected.
- ▶ potential for political interference in the distribution of revenue to charities.
- ▶ diminishment or elimination of community volunteer-based fundraising. Some charities see the new framework as a thinly-disguised "community chest" which, in their view, destroys charities' ability to help themselves and reduces them to dependence on government.
- ▶ the erosion of public support for gaming as a legitimate recreational activity if the sole intent of gaming is not to support charities.

If the charities' fears are realized and charity gaming revenues are jeopardized over the long-term, many Burnaby-based charitable organizations may face difficulty in offering their services. While recent information on the extent to which local charities rely on gaming revenue is not publicly available, the loss of the relatively discretionary income that gaming has provided could be critical, especially for smaller organizations. As a result, the City may come under pressure to help fund some of the services.

4.0 THE DEVELOPMENT OF A PROVINCIAL GAMING ACT

As noted above, the Province has committed to the development of a provincial Gaming Act by the spring of 1999. Frank Rhodes will oversee the review process leading to the new act, and intends to consult with stakeholders -charities, gaming facility operators, and municipalities - over the next few months. It is not clear at this time how the consultation will be carried out. A strategic analysis of the bingo sector will be included as part of the review, in deference to longstanding concerns on the part of commercial bingo operators about the financial viability of the sector.

While the consultation process is taking place, the Province will also be working to resolve a number of legal issues which could have an impact on ultimate policy decisions. The situation is dynamic and fluid. The Province is appealing the Supreme Court decision in favour of Vancouver and its slot machine bylaw. The Province also has an interest in the recent Supreme Court decision which favoured the City of Surrey and its video arcade bylaw over Great Canadian Casino Company. In addition, the Province has received notice of potential legal challenges by charities to long-standing elements of provincial gaming policy, including the levying of licensing fees, payment procedures for earnings, and the role of for-profit management companies. Depending on the outcome of the consultation process and the various legal proceedings, the Province could elect to fundamentally restructure gaming in the province.

5.0 CONCLUSION

The announcement of the interim framework for gaming in British Columbia seems to have resulted in more questions than answers about the current gaming environment. Until the precise nature of the new relationship between the B.C. Lottery Corporation and casino operators is clarified, it is difficult to assess the impact of the new model on municipalities. Generally, however, there is concern about the ability of municipalities to regulate the activities of a Crown Corporation through zoning and other bylaws. As well, in the absence of a Gaming Act, many charities are concerned about the reliability of the gaming revenue they have come to rely on to provide services. Any reduction in gaming revenue flowing to charities could put pressure on municipal resources.

Staff will continue to monitor the situation, to seek clarification on the many outstanding questions, and report to Council as appropriate.



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