

TO: CITY MANAGER

2000 JULY 25

FROM: DIRECTOR PLANNING AND BUILDING

**SUBJECT: RESPONSE TO FURTHER INDUSTRY CONSULTATION REGARDING
RETENTION OF FULL SERVICE PUMPS AT GASOLINE SERVICE
STATIONS**

PURPOSE: To provide a response from further consultation with gasoline service station providers, and to put forth a new recommendation.

RECOMMENDATIONS:

1. **THAT** the definition of "Gasoline Service Station, Self Serve" in the Burnaby Zoning Bylaw be amended to include a requirement for a minimum of one full serve refuelling position, which shall be in operation from 7:00 a.m. to 7:00 p.m., or whenever the service station is open for business, whichever is less.

REPORT

1.0 BACKGROUND

- 1.1 At its meeting of 1998 May 25, Council requested that staff prepare a report as to the advisability and feasibility of adopting a bylaw that would ensure the retention of full service gasoline pumps in the City of Burnaby.
- 1.2 At its meeting of 1999 March 01, Council received the requested report from this department which recommended "THAT the City Solicitor be authorized to prepare a bylaw amending the definition of Gasoline Service Station District, Self Serve in the Burnaby Zoning Bylaw to include a requirement for a minimum of one full serve pump, which shall be in operation for the entire time the service station is open for business". Council subsequently tabled that report pending a further report which provides information on lessee and oil company operated service stations, as well as the redevelopment potential of service stations in Burnaby.

- 1.3 On 1999 May 17, Council received the requested information, and tabled the report pending the appearance of an Arco delegation on 1999 June 21. Arco's presentation at that meeting revolved around technology that would enable gasoline pumps to be switched from self serve to full serve and vice versa. The proposed recommendations in the above two staff reports remained on the table until 1999 August 23, at which time Council lifted the items, and referred the matter back to staff for another report outlining the results of a more comprehensive consultation process with the industry, in addition to a discussion on the advisability/feasibility of dedicated full serve pumps as opposed to gas pumps that switch from full serve to self serve when full services are not required.
- 1.4 On 2000 March 17, the BC Supreme Court dismissed a Petro-Canada petition to have a District of North Vancouver zoning bylaw provision which requires full serve pumps in gasoline stations quashed. In the North Vancouver zoning bylaw, the definition of "Gasoline Station" includes full service for twelve hours each day the service station is open for business, or for the entire time the service station is open, whichever is less. The bylaw also requires gasoline stations to include a service bay for the repair and maintenance of automobiles.

Petro-Canada argued against the bylaw on the basis of it being "patently unreasonable", and beyond the jurisdiction of the municipality. Furthermore, Petro-Canada had also argued that the bylaw was discriminatory in the sense that it benefited a minority of people at the expense of the oil companies, independent operators and lessees. The Court dismissed both of these arguments.

2.0 OVERVIEW OF INDUSTRY SURVEY

- 2.1 Following the aforementioned BC Supreme Court ruling, staff initiated a comprehensive consultation of the petroleum retailing industry in Burnaby. This consultation took the form of a survey/questionnaire, which was sent to all gasoline service station providers in Burnaby and their consultants, in addition to the major oil companies with property interests in the municipality. This questionnaire provided ample opportunity for feedback and input in this zoning bylaw text amendment process. Of the seventy-four questionnaires distributed by mail, this department only received four responses, three of which were from major oil companies.

The prevailing theme in all responses was that the market would be able to ensure provision of full serve facilities throughout the municipality, and so therefore all responses opposed the 1999 March 01 recommendation to Council - that the definition of Gasoline Service Station District, Self Serve be amended to include a requirement for a minimum of one full serve pump, which shall be in operation for the entire time the service station is open for business.

In terms of alternatives to the aforementioned proposal, the questionnaire provided an option for an amendment to the recommendation which would require that a full serve pump be in operation for a limited number of hours per day, rather than for the entire time the service station is open for business. Three of the four responses indicated that this option was fair, given the intent of the City to legislate full serve requirements.

- 2.2 The questionnaire also requested feedback as to the use of pumps which could switch from self serve to full serve, or vice versa, as required. Two of the four responses indicated that such technology could be used in the near future in Canada. One response clearly indicated the technology would not be adopted because of the confusion caused particularly during peak hours of operation. Another response suggested an intercom system, whereby someone who needed full service would be able to inform the attendant of their need for assistance. In cases where there is only one attendant available, the respondent suggested that they lock the store/cash register and attend to the person requiring full service. This same respondent alluded to the introduction of wheelchair accessible pump islands, which could be introduced through the normal upgrading and replacement of pump equipment.
- 2.3 Finally, the questionnaire asked retailers how they would sign the full serve facilities in the various ways suggested. There were a variety of responses, ranging from no signage to including advertisement of the service on their free standing sign, given suitable arrangements could be made to include such information within their overall signage package.

3.0 GENERAL DISCUSSION

- 3.1 The industry input gained through the aforementioned consultation process provided some valuable insight as to some alternatives to the currently proposed zoning bylaw text amendment. These alternatives largely revolve around changes in technology to allow for a full serve pump to switch to self serve when full serve is not required. Furthermore, it was clear from the responses that a limited number of hours for full service was more practical than requiring full service whenever the station is open.
- 3.2 With reference to the new “switching” technology, it should be understood that much of this technology is untested and unproven in a Canadian context. Moreover, based on discussions with industry representatives, it would appear that such technology is not likely to be adopted by a majority of the industry, and thus to premise a change in policy on anticipated changes in technology may at this time be impractical. It is also unclear as to how this technology would be advertised and signed, both in terms of service availability and on-site direction for customers. One of the criticisms of this technology is that it would be confusing for motorists

in terms of which gas pump is devoted to self serve and which is devoted to self/full serve. This confusion could lead to on-site congestion, particularly during peak hours. Finally, because of the variability of such technology, and because retailers would likely use the technology in different ways (i.e., pump configuration and signage), enforcement of the regulations would be very difficult and problematic.

3.3 In terms of wheelchair accessible refuelling positions, it would seem that a level of service is being compromised. The intent of the proposed bylaw amendment is not only accessibility for the physically disabled, but also to ensure a level of service for the elderly, and anyone else who chooses to have their fuel dispensed by an attendant (e.g. in inclement weather). For this reason, the addition of wheelchair accessible refuelling positions, to essentially extend self service to the physically disabled, would not completely meet the objectives of the proposed bylaw amendments, and so would not be a recommended alternative in isolation from other regulatory measures. Wheelchair accessible refuelling positions are also problematic from an operational standpoint, given that the physically disabled are significantly inconvenienced by having to dispense their own fuel. However, wheelchair accessible refuelling positions as a means of broadening the refuelling options for the physically disabled has merit, provided attendant gasoline service is available for those requiring such services, and compliance with fire and safety regulations is assured.

3.4 The final alternative proposed in the questionnaire was that of scaling back the time during which full serve would be required under the proposed bylaw. The 1999 March 01 proposal requires full serve during the entire time the service station is open for business. As mentioned above, the industry responses indicated support for a limited number of hours during which attendant gasoline service is required. The issue then becomes whether to regulate the number of hours during which full serve is required (e.g., ten or twelve), or whether to stipulate hours of service (e.g., 7:00 a.m. to 7:00 p.m.). The industry clearly favours a limited number of unspecified hours, as individual stations would retain some flexibility in responding to local market conditions. The inherent flaw in this proposal is a lack of uniformity in terms of when stations are offering their attendant gasoline service. This would likely result in confusion among the motoring public, as well as difficulties in enforcing the bylaw. For these reasons, it seems stipulating hours of service is a more sure and practical alternative to the 1999 March 01 proposal.

It is also anticipated that attendant gasoline service would be extended beyond the bylaw requirements in specific local markets; for the same reasons why some existing stations currently provide full service during evening hours in a predominantly self serve market. A stipulated time during which attendant gasoline service must be provided is therefore more clearly discernable to the motoring public, is more easily enforced, and does not necessarily preclude such service beyond the bylaw requirements. In consideration of these factors, a

proposed amendment to the 1999 March 01 proposal should stipulate hours of operation requirements for attendant gasoline service. Specifically, the hours from 7:00 a.m. to 7:00 p.m. is recommended. These are the core hours of the day during which gasoline is dispensed, including the morning and afternoon peak traffic hours, and during which gasoline stations are more likely to utilize their full staff complement. The opportunity would continue to be available for gasoline stations to provide full serve beyond these core hours if they wish (e.g. throughout the evening and late night).

- 3.5 In order to encourage the advertisement of attendant gasoline service, it was suggested by one retailer in the survey that such advertisement be permitted as an addition to the requirements of the Sign Bylaw. In response, it is noted that Schedule I of the Sign Bylaw permits signage for public information purposes. Given that signage for full service capabilities is considered public information and a public service, then appropriate signage can be provided within the context of the Sign Bylaw. Therefore, requests for signing attendant gasoline service will be encouraged and considered as part of an overall signage proposal for specific gasoline service stations.

4.0 CONCLUSION

Further consultation and on-going dialogue with the petroleum retailing industry and user groups produced useful information pertinent to an examination of the retention of full service pumps in Burnaby.

An examination of the issues with the information brought to bear from further consultation revealed two alternative approaches. The first included technological changes to make service stations more flexible in their offerings. However, it was shown that such technology is largely untested, and as a subject of a municipal regulation difficult to enforce. The other approach focussed on reducing the number of hours during which full service would be required under the amended bylaw. It was determined that stipulating a set time during which full service is required is preferable to requiring a number of hours in which full service must be provided, as enforcement would be easier and greater certainty would be provided to the public.

In line with the above discussion, staff recommend that the definition of "Gasoline Service Station, Self Serve" in the Burnaby Zoning Bylaw be amended to include a requirement for a minimum of one full serve refuelling position, which shall be in operation from 7:00 a.m. to 7:00 p.m., or whenever the service station is open for business, whichever is less.

If the proposed zoning bylaw text amendment were to be adopted by Council, existing self serve stations previously approved under prevailing zoning regulations will become legally

non-conforming. Therefore, the proposed amendments will apply only to new stations, and stations which undergo major redevelopment; and so it is conceivable that existing self serve stations which have recently redeveloped will remain for a considerable time.

The current proposal before Council reflects a fair and equitable solution. It is responsive to the economic demands of the industry, yet, compared to current provisions of the zoning bylaw, maintains greater access to attendant gasoline service for the disabled community, the elderly and anyone else who requires such service.



D.G. Stenson
Director Planning and Building

EK:ds

cc: City Solicitor
City Clerk
Chief Licence Inspector