

TO: CITY MANAGER 2002 MARCH 20

FROM: DIRECTOR PLANNING AND BUILDING

SUBJECT: **PROPOSED TEXT AMENDMENT - INTERNET CAFES (CYBER CENTRES)**

PURPOSE: To recommend to Council bylaw text amendments related to internet cafe uses.

RECOMMENDATIONS:

1. **THAT** Council authorize the City Solicitor to prepare bylaws amending the Burnaby Zoning Bylaw and the Burnaby Business Licence Bylaw as outlined in Sections 2.5 and 2.6 of this report.
2. **THAT** the Locational Guidelines included in Appendix 1 be amended as shown to include Cyber Centres.

REPORT

1.0 BACKGROUND

- 1.1 On 2001 November 26, Council received a report which indicated the need to review internet cafe uses in the context of Burnaby's Zoning Bylaw. The need for such a review was prompted by increases in the number and complexity of inquiries and development proposals for internet cafes, many of which included more than forty terminals. Most of the proposed internet cafes indicated internet access as being the primary use, rather than accessory to a restaurant or retail-type use.
- 1.2 The aforementioned report noted that, due to the lack of recognition of internet cafes in the Zoning Bylaw, staff have considered internet cafes which have more than five terminals to be amusement arcades, and as such, require special zoning designations - either the C3c General Commercial or C4c Service Commercial Districts. Their interpretation as amusement arcades was based largely on the fact that they tend to draw large numbers of youth and young adults utilizing terminals for entertainment-type uses. Internet cafes accessory to another use have been permitted in Burnaby. As such, staff have permitted internet cafes with less than six terminals to operate as an accessory to retail or restaurant-type primary uses (e.g., Chapters and London Drugs).

2.0 DISCUSSION

2.1 Generally, internet cafes are used for a variety of purposes, including business and personal communication (e.g., e-mail, internet conferencing and online chat), research (e.g., world wide web searches) and entertainment (e.g., online video games). Internet cafes are also synonymous with “cyber cafe”, “PC cafe” and “cyber centres”. Most internet cafes are located in commercial areas with a vehicular orientation. Finally, while internet cafes are well used by tourists, it is evident that the market for internet cafes in Burnaby is primarily local.

2.2 Burnaby currently has approximately eighteen businesses that offer some degree of internet cafe-type services throughout the city, most of which are situated in town centre locations or along primary arterial roads. While most internet cafes are storefront establishments, some are also located within enclosed shopping malls or in large retail complexes, and provide between six and fifty computer terminals with internet access. Of the eighteen internet cafes in Burnaby, fifteen function as *de facto* arcades insofar as their access to internet services focuses primarily on online video games. Finally, it is noted that most of Burnaby’s internet cafes have extended hours (i.e., until 4:00 a.m.), and that some operate on a twenty-four hour basis. Given the close proximity of some existing internet cafes to residential uses, extended hours of operation are inappropriate due to the resultant traffic and noise generated by such uses.

From a business licence perspective, internet cafes are not recognized as a discreet permitted use, and as such are required to be accommodated within existing use categories which most closely resemble the primary business use proposed. It is also noted that many internet cafes operate without permits or licences, and as such often seek the requisite approvals only after City staff have conducted inspections. Enforcement of the Zoning Bylaw in such instances is pursued on a case by case basis as the establishments become known to staff.

2.3 In light of evidence suggesting that most of the internet cafes in Burnaby serve as online video gaming centres, and that they are primarily frequented by youth and young adults, the RCMP has expressed concerns relating to the potential for violence at such establishments. These concerns are based on recent experiences in responding to 911 calls due to violent altercations at various internet cafes in Burnaby. Furthermore, the RCMP has reason to believe that internet cafes are used by gangs for recruitment purposes. Finally, it is noted that some internet cafes in the region provide for online gambling services, although the RCMP has not yet reported online gambling at Burnaby internet cafes. The potential for online gambling nevertheless remains a concern, based on other municipalities’ experiences (e.g., Vancouver, Surrey and Richmond).

- 2.4 Staff have researched the experiences of other municipalities in addressing internet cafes. The various responses ranged from interpreting them as an entertainment use, thus permitting them in many commercial zones, to outright prohibition (for many of the reasons discussed above).

Regionally, the City of Richmond classifies internet cafes with less than five terminals as “commercial entertainment” uses, and as such permits them in very few commercial zones. Internet cafes with more than five terminals are considered to be an “amusement centre” in Richmond, and subject to a number of business licence regulations (hours of operation, age of employees, age of clientele, serving school-aged children during school hours, etc.). Finally, each internet cafe proposal with more than four terminals is evaluated on a case by case basis by Richmond Council through an amendment process to the Business Regulation Bylaw. Similar treatment of internet cafes being likened to arcades is common throughout the Lower Mainland. For example, New Westminster and Coquitlam consider internet cafes with more than four and three terminals respectively to be arcades, thus requiring restrictive commercial zoning designations.

The City of Vancouver treats internet cafes as a use unto themselves. In essence, Vancouver considers internet cafes to be arcades, and permits them as a conditional approval use requiring a Development Permit. Applications are evaluated on a case by case basis, which offers the opportunity for input by the Police and neighbouring property owners/tenants. Online gambling is a significant concern for City of Vancouver staff given incidences where gambling terminals have been found in back rooms of retail stores offering internet access. Vancouver’s primary objective is to deal with internet cafe proposals in a thorough manner to avoid the potential for gambling and gang activity at these locations.

Internationally, the City of Garden Grove, California, recently prohibited new internet cafes based on that city’s Council determining such uses to be linked to gang violence and hence a threat to public health and safety. Garden Grove’s planning department is currently in the process of amending the relevant zoning ordinances to place a number of locational and operational restrictions on new internet cafes. It is also worthy to note that Taipei City Council, on 2001 December 06, passed legislation restricting internet cafes to few commercial zones, and specifically does not allow them to be located within 200 meters of schools. The legislation also prohibits children under the age of fifteen from entering such establishments, and requires proprietors to install devices designed to screen internet content and prevent access to pornography and gambling services.

Both the regional and international experiences with internet cafes suggest the issues associated with such establishments to be consistent with those of Burnaby. The range of experiences in addressing these issues therefore provides useful information in evaluating the relevant City bylaws vis-a-vis internet cafes. While prohibition or requiring installation

of screening devices on terminals may not be considered appropriate at this time (on the grounds of such a response being extreme and difficult to enforce), some adjustments to the Zoning Bylaw and the Burnaby Business Licence Bylaw appear warranted.

- 2.5 In view of the above, a number of amendments to the Burnaby Zoning Bylaw are proposed. As it is desirable to have internet cafes as a discreet permitted use in the bylaw, a definition of the use must be provided. Therefore, it is proposed that Section 3 of the Burnaby Zoning Bylaw be amended to include a definition of “cyber centre” similar to the following:

‘CYBER CENTRE means an establishment that provides six (6) or more computers and/or other electronic devices to a maximum of fifty (50) for access to that system commonly referred to the “internet”, e-mail, or for playing video games over the internet, and/or access to other computer software programs, to the public for compensation, but does not include internet access facilities provided at educational institutions or public libraries.’

It is acknowledged that this definition does not distinguish internet cafes used for video gaming purposes from those used for communication or research. This is due largely to the impracticality of making such a distinction insofar as enforcement would be complex and difficult. It is therefore believed that an all encompassing single definition would function adequately in the context of the Zoning Bylaw text amendments put forth below, and that the overall process would not prove to be onerous on those establishments with a research or communication focus. The term “cyber centre” is used rather than “internet café” due to the latter connoting a principal use which includes the serving of food and/or drink.

It is further proposed that Sections 303.1B and 304.1A of the Burnaby Zoning Bylaw be amended to include cyber centres as a permitted use in the C3c General Commercial and C4c Service Commercial Districts. The “c” subscript zoning designation would require each internet café proposal to go through a rezoning, thus allowing public input into the process. Each application would be assessed on its own merits to ensure internet cafes are appropriately located in commercial areas with high pedestrian and vehicular traffic, and away from schools, residential uses, and other arcade-type establishments. Furthermore, the intent behind including internet cafes in the C3c and C4c zoning districts is to ensure they are centrally located in busy commercial areas where they can be effectively policed. It is acknowledged that, under this approach, an arcade could locate in any site vacated by an internet cafe (or vice versa) which had the appropriate “c” zoning; the net effect being a one for one replacement. It is noted, however, that staff consider the two uses to be very similar, and would evaluate internet cafe proposals in the same manner as arcade rezonings (i.e., applying the Council-adopted “Locational Guidelines for Pool/Billiard Halls and Amusement Arcades” **attached** as Appendix 1). It is further noted that the use of subscript zoning is common in Burnaby. For example, restaurants in Industrial Zones are required to obtain an “r” designation, liquor stores in Commercial Districts an “a” designation, and Leisure Centres in Industrial Districts an “l” designation.

APPENDIX 5

COMPARATIVE ELECTRICITY PRICES

COMPARISON OF MONTHLY BILLS - CANADA AND WESTERN U.S. ELECTRIC UTILITIES

As at July 1, 2001

PROVINCE AND CITY	DATE RATE EFFECTIVE	RESIDENTIAL USE			GENERAL USE				LARGE INDUSTRIAL		
		250 kW.h	1000 kW.h	2500 kW.h	300 kW	120,000 kW.h	400,000 kW.h	1,600,000 kW.h	50,000 kVA 95% Power Factor	65% LF per kW.h	85% LF per kW.h
WESTERN USA (\$CDN)											
Bellingham	1 Apr, 2001	\$28.54	\$94.06	\$234.76	\$582	\$11,344	\$30,578	\$121,598	6.25¢	6.08¢	
Seattle	1 Jul, 2001	\$19.21	\$110.77	\$312.17	\$521	\$10,545	\$32,588	\$130,757	7.68¢	7.67¢	
Los Angeles	1 May, 1998	\$41.26	\$163.64	\$408.41	\$1,301	\$17,484	\$54,861	\$219,204	12.61¢	11.46¢	
BRITISH COLUMBIA											
Vancouver	1 Apr, 1996	\$17.88	\$61.16	\$147.71	\$394	\$5,584	\$18,248	\$73,199	3.57¢	3.34¢	
Trail-Rossland	1 Jan, 2001	\$21.56	\$61.10	\$140.18	\$376	\$6,754	\$17,797	\$69,636	3.66¢	3.45¢	
ALBERTA											
Calgary*	1 Jan, 2001	\$14.67	\$118.58	\$326.40	\$736	\$15,271	\$49,188	\$196,424	5.73¢	5.58¢	
SASKATCHEWAN											
Regina	1 Apr, 2001	\$30.97	\$86.17	\$196.57	\$459	\$8,086	\$26,956	\$78,122	4.40¢	4.25¢	
MANITOBA											
Winnipeg	1 Apr, 1997	\$20.24	\$58.94	\$136.34	\$360	\$5,342	\$15,916	\$63,664	3.24¢	2.95¢	
ONTARIO											
Toronto	1 Jun, 2001	\$31.34	\$92.95	\$216.18	\$530	\$9,944	\$23,566	\$92,351	8.33¢	6.69¢	
QUEBEC											
Montreal	1 May, 1998	\$23.55	\$60.33	\$149.88	\$456	\$8,055	\$23,747	\$86,798	4.23¢	3.80¢	
NEW BRUNSWICK											
Saint John	1 Dec, 1998	\$28.85	\$79.47	\$162.12	\$590	\$9,422	\$25,690	\$102,760	5.41¢	4.93¢	
NOVA SCOTIA											
Halifax	1 Mar, 1996	\$31.38	\$94.00	\$219.25	\$671	\$7,696	\$25,298	\$99,857	5.85¢	5.49¢	
NEWFOUNDLAND											
St John's	1 Jul, 2001	\$32.20	\$82.62	\$182.47	\$584	\$7,823	\$23,774	\$91,352	5.16¢	4.91¢	

* Bills include all discounts and riders where identifiable, but do not include GST, Provincial, State or Franchise taxes.

* Calgary general service customers with over 250 mW.h annual consumption are charged the hourly Alberta Pool Price as well as unbundled rates. US\$ Conversion: \$1.57

Source: BC Hydro and Hydro Quebec.

Info Distributed to Council at 2002 March 25 Council meeting

The number of terminals to be permitted in an internet cafe will be limited by a site's available parking. Therefore, it is proposed that Schedule VIII of the Burnaby Zoning Bylaw be amended to include a parking requirement for internet cafes at a ratio of one space for every five terminals, which is appropriate given the potential for traffic to be generated by internet cafes. The proposed parking requirement for internet cafes is also consistent with that of amusement arcade uses.

2.6 Dovetailing the recommended changes to the Burnaby Zoning Bylaw are proposed amendments to the Burnaby Business Licence Bylaw, which would largely address the operational issues associated with internet cafe uses. It is therefore proposed that the Burnaby Business Licence Bylaw be amended to include the definition of cyber centre as discussed in Section 2.5 of this report. Further, it is proposed that the following be included in the Burnaby Business Licence Bylaw as operational standards applying to internet cafes:

- a) The general business licence fee of \$426.00 shall apply for new business licences, with \$125.00 being the annual renewal fee in subsequent years of operation;
- b) "No Loitering" signs shall be posted at the front and rear of the business. In addition, a waiting area with not less than eight seats shall be provided for customers waiting to use a terminal. No outside waiting or seating area is permitted;
- c) The hours of business operation shall be between 7:00 a.m. through 12:00 a.m. only. There shall be no customers or patrons in or about the premises between the hours of 12:00 a.m. and 7:00 a.m., during any day of the week; and
- d) Employees shall be at least eighteen (18) years of age. There shall be a minimum of one (1) employee present at all times.

These proposed changes to the Burnaby Business Licence Bylaw are intended to work in conjunction with those proposed for the Burnaby Zoning Bylaw. Therefore, the two bylaws will work together as a set of regulations governing the location and manner of operations for internet cafes in Burnaby.

2.7 As indicated, implementation of the above proposals requires various amendments to both the Burnaby Zoning Bylaw and the Burnaby Business Licence Bylaw. The amendments to the Burnaby Zoning Bylaw will follow the usual process for text amendments, including presentation to a Public Hearing. Amendments to the Burnaby Business Licence Bylaw require four readings by Council, and no requirement for presenting the proposed changes to a Public Hearing. It is also believed that the proposed changes will result in negligible non-conformity.

3.0 CONCLUSION

Internet cafes are presently not included as a distinct permitted use in the Burnaby Zoning Bylaw. As such, staff have been required to address a growing number of inquiries and development applications for internet cafes by treating them as amusement arcades. While the two uses are intrinsically similar, there exist some minor differences which suggest the need for a distinction in the Zoning Bylaw. Given the concerns with internet cafes expressed throughout this report - potential for gang related violence/recruitment and incompatibility issues with neighbouring land uses - a number of amendments to the Burnaby Zoning Bylaw and the Burnaby Business Licence Bylaw are proposed which together, would provide a balanced approach in addressing the social and locational issues associated with internet cafes. Finally, it is noted that, in principal, the proposed approach is similar to that of many other municipalities in the Lower Mainland.



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Director Planning and Building

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Attach

cc: Chief Licence Inspector
RCMP Officer In Charge
City Solicitor
Director Finance

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APPENDIX 1

Locational Guidelines for Pool/Billiard Halls, Amusement Arcades and Cyber Centres

Although pool/billiard halls, amusement arcades and cyber centres are permitted only in Commercial Districts, their location must also be considered in relation to adjacent land-uses.

The Planning Department's support for individual applications would be dependent upon each applicant for rezoning demonstrating that the proposed development would be generally compatible with the adjacent existing and planned land uses and not present a nuisance factor.

The following guidelines would be used as references in assessing rezoning applications and in reporting to Council:

1. Rezoning to the C2c, C3c and C4c zoning districts should be considered only on properties currently zoned or designated for commercial use.
2. A reasonable separation and distribution of arcades, billiard halls and cyber centres in the area of the proposed Cc rezoning should be maintained in order to avoid a concentration of such sensitive uses in anyone area.
3. The proposed location, including the parking area, should be well-lit, relatively open to surveillance and not attractive as a "hang out" area.
4. Primary criteria for assessment would be the degree of separation of the arcade, pool/billiard hall, or cyber centre from certain land uses which could experience direct negative impacts and the time of day those negative impacts might apply. These impacts include, but are not limited to, increased noise, nuisance activity and a decrease in the liveability of residential developments in general.

The following separation criteria are not intended to be definitive. They are guidelines to which discretion will be applied. Applications will be assessed on a site specific basis, taking into account the orientation of the development, major physical barriers between uses, traffic flow from the site, and Community Plan designation for properties in proximity.

It is recommended that, in general, sites zoned C2c, C3c and C4c have the following minimum separation from the current and/or designated uses listed below:

- a. 100 metres (328 ft.) from residentially zoned properties and senior citizens housing project.
- b. 100 metres (328 ft.) from hospitals and rest homes.
- c. 400 metres (1312 ft.) from public and private elementary and secondary schools.

- d. 400 metres (1312 ft.) from licenced child care facilities, especially those providing out-of-school care, including those in residentially- zoned areas.
- e. 400 metres (1312 ft.) from parks.
- f. 400 metres (1312 ft.) from special institutional uses such as rehabilitation centres and half way houses.
- g. 400 metres (1312 ft.) from licenced group homes.

In sites/uses such as outdoor shopping centres and individual commercial lots, the separation should be measured from the property lines of the commercial property, as the major impact of these uses is usually generated outside the actual building. However, if the site proposed for the use is in an enclosed mall, it is recommended that the above separation be measured from the actual tenant space, because the activity area, including the parking and potential patron hang out area, can be contained within the mall.

It should be noted that many strip commercial areas will be unable to fully satisfy all the specific guidelines noted, particularly those pertaining to residential areas.