

TO: CITY MANAGER

2003 December 9

FROM: DIRECTOR PLANNING AND BUILDING

SUBJECT: PROVINCIAL LIQUOR LICENSING REGULATIONS AND PROCESSES

PURPOSE: To advise Council of more changes to the Provincial regulations and processing procedures regarding liquor licencing, as well as a Provincial response to a letter from Council regarding the required public input process and the latest information on the privatization of liquor stores.

RECOMMENDATIONS:

1. **THAT** Council approve an amendment to the processing procedure for local government consideration of applications for a temporary change to a liquor licence, as described in Section 2.1.3 of this report.
2. **THAT** Council approve a minor amendment to the processing procedure and criteria for local government consideration of applications to amend the operating hours of existing food primary licences, including stipulating which applications Burnaby wishes to comment on, as described in Section 2.2.3 of this report, and that the Liquor Control and Licensing Branch be so advised.
3. **THAT** a copy of this report be sent to Mary Freeman, Acting General Manager and Cheryl Caldwell, Deputy General Manager, Liquor Control and Licensing Branch, 1019 Wharf Street, Victoria, B.C. V8V 1X4.

R E P O R T

1.0 BACKGROUND INFORMATION:

- 1.1 On 2002 December 2, significant regulatory changes came into effect regarding the Provincial regulations and processing procedures affecting liquor licence establishments. On 2003 April 28, Council adopted the recommendations contained in a policy report regarding the processing procedure and criteria to be utilized in assessing liquor licence applications. The Liquor Control and Licensing Branch (LCLB) has recently announced more changes to their regulations and processing procedures, on which this report provides information. Adjustments are recommended to Burnaby's processing procedure where warranted. One other minor adjustment to Council's adopted criteria for assessing liquor licence applications is recommended based on a new understanding of the Provincial regulations.

- 1.2 On 2003 June 16, a recommendation was adopted that Council request the LCLB to review its processing requirements for local government consideration of applications to amend liquor licences in order to allow the process to better reflect specific circumstances for each application and that Burnaby be given the flexibility to determine which liquor licence applications require public input and that the Municipality be so advised. Responses to this Council motion have been received and are summarized for Council's information.
- 1.3 At the 2003 November 3 Council meeting, under New Business, Council directed staff to prepare a report providing information on the present situation with the BCGEU and the Provincial government, a possible moratorium on the privatization of liquor distribution and identifying any future courses of action for the City to take to address this matter. This report also provides information on this situation.

2.0 RECENT PROVINCIAL CHANGES:

2.1 Applications For a Temporary Change To a Liquor Licence

2.1.1 Background

The policy report adopted by Council on 2003 April 28 advised of a recent change in the Provincial government processing procedure for requests for input on applications for temporary changes to liquor licenses, which involve requests for temporary extensions to liquor licensed areas and temporary changes to the hours of sale, most commonly associated with a one day event. The Provincial government forms for these applications previously required comment from the R.C.M.P. and local government, which was administered by this Department. Typically, two to three such requests would be received in one year and the requests were usually to amend the liquor licence for one day for a special event or purpose.

Less than a year ago, staff became aware that under the new (post December 2002) regulations, a local government resolution would now be required in connection with a requested temporary change to hours of liquor sale, a temporary extension of licensed area, a winery special event endorsement, a temporary patron participation endorsement or a temporary location change.

Council adopted the recommendation at that time that applications for temporary changes to a liquor licence be circulated to the pertinent City Departments in order to provide Council with a report and recommendation on the application.

The Provincial government announced on 2003 December 1 that a Council resolution would no longer be required for temporary amendments to a liquor licence and that the local government comment may be provided by staff as was previously the case.

2.1.2 Discussion:

The above change in Provincial regulations essentially returns the processing procedure to that which was required for many years prior to the Provincial changes in December 2002. The April 2003 policy report discussed the possibility of Burnaby opting out of commenting on this type of application. This option was discussed due to the likely insignificant impact of individual applications on the community, but this option was not recommended due to a concern that the LCLB may approve a large number of temporary changes for any one liquor licence establishment, resulting in regular changes in the liquor licence without local government input. However, it was also recognized that certain applications for temporary changes to a liquor licence, may be associated with a positive community event, without creating negative impacts on the community.

It is noted that staff have received some enquiries over the last year from holders of liquor licences in Burnaby which wished to apply for a temporary amendment to their liquor licence, sometimes on relatively short notice. However, the time required to process a liquor licence application and seek a Council resolution to conform to the new regulations was prohibitive to their desire to hold a one time special event with an amended liquor licence. Prior to December 2002, this Department, in consultation with the RCMP, administered the input on these applications and no problems were encountered.

2.1.3 Proposed Processing Procedure

In light of the most recent changes in Provincial government regulations regarding local government input on applications for a temporary amendment to a liquor licence, the minor nature of the applications in terms of overall community impact, the occasional need to process these requests in a timely manner and the lack of problems related to the pre-December 2002 processing procedure, it is recommended that Planning staff be authorized to process requests for comments on applications for a temporary amendment to a liquor licence, in consultation with the RCMP. If an application which is considered to be extraordinarily or particularly sensitive, staff will forward it to Council for their input to the LCLB.

As discussed in the previous policy report on this subject, consideration of these types of applications is based on the premise that the event is for a special occasion, such as the extension of liquor sales area at the Legion in connection with Hats Off Day and is not to be used in an attempt to receive temporary, but regular changes to a liquor licence. To avoid this scenario, as a guideline, favourable consideration to requests for temporary changes to liquor licences will continue to be limited to two per property per year.

2.2 Criteria For Consideration of Amendments to Hours of Sale For Existing Food Primary Licences

2.2.1 Background

The new Provincial regulations, as of December 2002, state that an application to amend the hours of sale of liquor in a food primary licensed establishment (a restaurant) to past 12:00 midnight will be referred to local government for comment. In April 2003, Council adopted the following regarding Council consideration of applications for amendments to the hours of liquor sale in food primary establishments past 12:00 a.m:

That Council only comment on amendments to the hours of liquor sale in food primary establishments past 12:00 a.m. (midnight) if:

- a) the proposed hours of liquor sale are later than 2:00 a.m., *or*
- b) the establishment has, or proposes to have, a patio

These criteria were based on the understanding that LCLB regulations require patron participation entertainment to cease by 12:00 midnight.

2.2.2 Discussion:

Clarification has recently been provided by the LCLB regarding the time limitation on patron participation entertainment in food primary establishments. Staff have been advised that while LCLB policy is to not allow patron participation entertainment past 12:00 midnight, this limitation is not a regulation and entertainment past 12:00 midnight may be applied for. While LCLB staff have advised that patron participation entertainment occurring after midnight is very rare, it is still a possibility.

If a food primary establishment with patron participation entertainment were to apply for, and receive permission for hours of liquor sale after 12:00 midnight, it is considered highly probable that the nature of the establishment (food primary) could be questionable and community impacts could be more significant. Therefore, it is considered appropriate for late night patron participation entertainment to be considered if a food primary licensed establishment applies for hours of liquor sale past 12:00 midnight.

2.2.3 Proposed Processing Procedure and Criteria

It is recommended that Council amend the processing procedure and criteria for consideration of amendments to the hours of liquor sale as follows:

That Council only comment on amendments to the hours of liquor sale in food primary establishments past 12:00 a.m. (midnight) if:

- a) the proposed hours of liquor sale are later than 2:00 a.m., *or*
- b) the establishment has, or proposes to have, a patio, *or*
- c) the establishment has, or proposes to have patron participation entertainment past 12:00 midnight.

2.3 Relocation of Licensee Retail Stores

2.3.1 Background

Until recently, Licensee Retail Stores (formerly known as Cold Beer and Wine Stores) were only permitted to be located on the same site (or appear to be on the same site) as a liquor primary licenced establishment. On 2003 November 10, the Provincial government announced that the regulations affecting Licensee Retail Stores have been amended to permit LRS licensees or applicants (this refers to those applications for Licencee Retail Stores which were received by the LCLB before the moratorium was again placed on these applications in November 2002 - of which seven were in Burnaby) to relocate their stores away from their adjoining liquor primary establishment (or vice versa). An LRS may move to any location within the local government jurisdiction in which it is presently located. Alternatively, the store may relocate to a neighbouring local government jurisdiction provided the distance from the original site is no more than 5 kilometers. The regulations continue to stipulate that the LRS and the qualifying (associated) liquor primary licensed establishment must be owned by the same person.

2.3.2 Discussion:

The Provincial regulations also continue to require the proposed site to have the appropriate zoning. Burnaby has required all new liquor stores to go through the rezoning process to a C"a" commercial zoning sub-category since 1988. Burnaby has been well served by the rezoning requirement for new liquor stores and utilization of Council adopted guidelines for assessing applications for rezonings to a C"a" zoning category. With the change in Provincial regulations, Burnaby will continue to require the rezoning process for all applications for a new liquor store, with Council making the final decision on all new liquor store locations.

It could be stated that this Provincial regulatory amendment is a positive change at the local level in terms of reducing potential land use impacts and minimizing the negative aspects of liquor oriented facilities. When the Provincial government first introduced Licensee Retail Stores in the late 1980's, the viewpoint was put forward that liquor stores should appear in commercial areas as another typical retail use, rather than requiring liquor stores to be located next to liquor licence establishments, thus focusing the liquor orientation of certain sites. This regulatory change may help facilitate allowing liquor stores to appear as a more standard retail store in the commercial areas of Burnaby.

No changes to Burnaby's regulations and processing procedure are required in relation to this Provincial change in regulations.

3.0 PRIVATIZATION OF LIQUOR STORES

3.1.1 Background

In early 2003, the Liquor Distribution Branch released its three year Corporate Strategy for the fiscal years 2003 through 2006. It indicated that the Provincial government Core Services Review concluded that it is not a core service of government to be directly involved in the warehousing, distribution, and retailing of beverage alcohol. Included among the many objectives in the Three Year Corporate Strategy was an objective to close 30 to 40 government liquor stores in each of the first two fiscal years and 40 to 50 stores in the third fiscal year.

LDB staff have recently advised that the direction of the Branch has been revised in terms of retailing. While under a new collective agreement with the BCGEU, up to 30 stores could be closed across the Province over the period of the two year contract, discussions with representatives of the Liquor Distribution Branch indicate, however, that there may, in fact, be no stores closed. There are, however, no written announcements or news releases from the government to date to this effect. The BCGEU website advises that employees of the Liquor Distribution Branch voted 85% to accept contract changes that will maintain the B.C. Liquor Stores and distribution centres in the public service.

3.1.2 Discussion:

As discussed in Section 2.3.2 above, Burnaby requires all applications for new liquor stores to seek Council approval through the rezoning process and for each application to be assessed utilizing Council adopted locational guidelines. The Burnaby Zoning Bylaw does not differentiate between private and public liquor stores in terms of land use classification. Despite the recent Provincial government decision to not close the significant number of government liquor stores that was announced in 2002, it appears likely that with the temporary lifting of the moratorium on applications for Licensee Retail Stores in 2002 and the November 2003 announcement of the change in regulations permitting greater flexibility in where licensee retail stores could be located, that Burnaby will continue to receive a small number of applications for private liquor stores.

At this time, there does not yet appear to be any degree of clarity on the future of government liquor stores in Burnaby for the period to the end of the new collective agreement with the BCGEU, or beyond.

As has been previously stated, Burnaby is well positioned to deal with applications for liquor stores through requiring each application to be individually assessed utilizing Council adopted guidelines and requiring each site to be rezoned to the pertinent C”a” zoning sub-category which permit liquor stores as a principal use. Therefore, no changes in regulations or processing procedures are recommended.

4.0 LCLB RESPONSE TO COUNCIL MOTION REGARDING PROCESSING PROCEDURE AND PUBLIC INPUT REQUIREMENT FOR APPLICATIONS TO AMEND LIQUOR LICENSES

4.1.1 Background:

The recommendations in the policy report adopted by Council on 2003 April 28, included Council approval of a processing procedure and criteria for local government consideration of applications to amend existing liquor primary licences. The processing procedure included a recommendation from staff that the need for a public input process in connection with the application to amend the licence would be based on input from the RCMP and Environmental Services Division, Engineering Department related to the record of the establishment and the degree of change proposed in the application. The recommendations in the report were adopted by Council was sent to the General Manager of the LCLB.

Subsequently, Council supported three applications for extended hours of liquor sale in connection with three liquor licence establishments in Burnaby (Shark Club, Champs Sports Pub and the Firefighters Social and Athletic Club). In all three cases, Council supported the staff conclusion that these applications should proceed without a public input process due to the record of the establishments and the minor degree of change proposed. The Council resolutions were forwarded on this basis. Burnaby then received three letters from the LCLB rejecting Burnaby’s resolution and requiring Council to revisit the matter.

It was mandated by the Provincial government that all three applications proceed to the public notification stage in the process and a public input process was developed by Burnaby. For information, no comments were received from the public input process on any of the applications and after Council consideration of further reports, the required Council motions were forwarded to the Provincial government in support of each of the three applications.

In addition, Council adopted the following recommendation as contained in a staff report:

THAT Council request the LCLB to review its processing requirements for local government consideration of applications to amend liquor licences in order to allow the process to better reflect specific circumstances for each application and that Burnaby be given the flexibility to determine which liquor licence applications require public input and that the Municipality be so advised.

4.1.2 Discussion:

Burnaby received a copy of a letter from Rich Coleman, Solicitor General, to John Nuraney, MLA, regarding the request from Burnaby Council and a letter was also sent from the Acting General Manager, LCLB to this Department in October 2003. The letters discussed working with local governments to improve the process or assisting local governments in the new process. A response was then sent to the LCLB by staff expressing our willingness to participate in any discussions on improving the process. Notwithstanding the initiative proposed to work with local governments, the essential point of the two letters received is as follows:

Letter from Mary Freeman, Acting General Manager, LCLB

“It is usually the residents in the area around the establishment who are most affected by a liquor licence. This is why the regulations require the views of residents be gathered before a new liquor licence is issued or where a change to a licence, such as an extension of hours, may significantly alter the establishment’s operation. These issues must be taken into account as part of our review of the process.”

Letter from Rich Coleman, Solicitor General

“The processes that local government must follow are set down in regulation and are not subject to discretion by the Branch. To ensure there is fairness in determining whether a liquor licence should be granted, applications must follow the same processes. The objective is to make sure that all new licences are consistent with community standards and are not contrary to the public interest.”

It is apparent from these letters that the Provincial government is not likely to change its position on the matter of local government having any discretion on when public input should be required for applications to amend liquor licences, either through allowing discretion by the Branch or through a change in the regulations. Through Burnaby’s participation in the Inter-Municipal Liquor Control Discussion Group, it has been discovered that other municipalities have also had difficulties with this requirement, as well as the LCLB requirement dictating the matters which must be addressed in Council resolutions on liquor licence applications. However, it appears that, similar to Burnaby, local governments have adapted to the Provincial requirements and liquor licence applications are being processed, albeit not as quickly as originally anticipated. Staff have endeavored to make the required public input process as efficient and streamlined as possible, under the circumstances and requirements dictated by the Provincial government.

Unless Council chooses to opt out of providing local government input to the LCLB on applications for amendments to liquor primary licences, which is not recommended, it would appear that Burnaby will be required to conduct a public input process on all applications for amendments to liquor primary licences without the use of any Council discretion.

3.0 CONCLUSION:

Arising out of further changes in the Provincial regulations and processing procedures regarding liquor licence applications, two amendments are recommended to Burnaby's adopted processing procedure for liquor licence applications. The first is a recommendation that staff be permitted to administer applications for a temporary change to a liquor licence for special events, such as the Legion's outdoor patio established in connection with Hats Off Day. This is the same procedure which was utilized before the Provincial government changed the regulations in December 2002. With the Provincial government amending the regulations to not require a Council resolution on these applications again, it is recommended that Burnaby return to its previous process, with the guideline that only two such temporary changes be permitted per establishment per year. The second minor change involves an additional criteria for referral of applications for hours of liquor sale past 12:00 midnight to Burnaby for its input. It is recommended that if the food primary establishment has or proposes to have public participation entertainment past 12:00 midnight and that if the establishment has applied to extend its hours of liquor sale past 12:00 midnight, the application be referred to Burnaby for comment.

Other matters this report deals with include a change in Provincial regulations regarding the permitted location of Licensee Retail Stores and a change in government direction regarding the closure of government liquor stores. Burnaby has zoning regulations which require all new applications for liquor stores to go through the rezoning process and be assessed utilizing Council adopted guidelines for assessing liquor stores. Finally, this report provides information on the Provincial government response to a Council resolution regarding the Provincial government requirement that a public input process be conducted on all applications for amendments to liquor primary licenses.



J. S. Belhouse
Director Planning and Building

BW:gk

cc: City Clerk
RCMP, Burnaby Detachment
Director Engineering, Environmental Services Division
Chief Licence Inspector

