

TO: CITY MANAGER 2005 February 02

FROM: DIRECTOR PLANNING AND BUILDING

SUBJECT: PROPOSED LIQUOR STORE ZONING AMENDMENT

PURPOSE: To propose amendments to the Burnaby Zoning Bylaw in response to Provincial government changes in the liquor distribution system.

RECOMMENDATIONS:

1. **THAT** Council authorize the preparation of a bylaw amending the Burnaby Zoning Bylaw as outlined in this report.
2. **THAT** Council authorize staff to initiate a concurrent rezoning application to bring LRS establishments, as identified in this report, into conformity with the proposed Zoning Bylaw amendments.
3. **THAT** a copy of this report be forwarded to all Licensee Retail Store establishments in Burnaby, including those applicants with pending LRS licences and the General Manager, Liquor Control and Licensing Branch.

REPORT

1.0 BACKGROUND INFORMATION:

1.1 In 1988, the Liquor Control and Licensing Branch (LCLB) created the potential for a limited number of Licensee Retail Stores (LRS's, or private liquor stores) to be established throughout the Province, including a number in Burnaby, through a time-limited application period for qualifying liquor licensees. In response to this legislative change, Council amended the Burnaby Zoning Bylaw to create the C2a and C3a commercial zoning sub-categories, within which liquor stores are a permitted use. All new liquor store locations in Burnaby thus require Council approval through the rezoning process. The Zoning Bylaw was also amended to include the following definition for "liquor store":

- (a) A government liquor store, a government beer store, a government wine store or an agency established by the general manager under the *Liquor Distribution Act*, or
 - (b) A licensee retail store (LRS) licenced under the Liquor Control and Licensing Act to sell liquor for off-premises consumption.
- 1.2 In 2002, the Provincial government temporarily lifted a moratorium on receiving LRS applications from already established facilities. The LCLB received seven applications from Burnaby liquor primary licensees, of which five are still pending. The Provincial government also amended LRS regulations to allow private liquor stores to sell spirits in addition to beer and wine.
- 1.3 In 2003, the Provincial government made further amendments to LRS regulations, permitting LRS licensees or applicants to relocate their stores away from their adjoining liquor primary establishment 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 less than 5 km. In 2004, the Provincial government also announced that applications to relocate an LRS will not be approved if the proposed site is within 0.5 km of an existing LRS or the site of an LRS application already in progress.
- 1.4 On 2005 January 17, Council directed staff to initiate a review of the Burnaby Zoning Bylaw with respect to the possibility of distinguishing government from private liquor stores. In response to that direction, this report proposes amendments to the Burnaby Zoning Bylaw which would, if approved, differentiate government liquor stores from LRS establishments.

2.0 GENERAL DISCUSSION:

2.1 *Strategic Direction of the Liquor Distribution Branch (LDB)*

As outlined above, the provincial government is currently pursuing a policy of privatizing a number of their smaller liquor stores. This is essentially a result of three independent but intrinsically linked strategic directions. One was the temporary lifting of the moratorium on new LRS establishments in late 2002. The province has indicated that the current policy affecting new LRS's will remain in effect until 2008. The second, as of 2003 November, is the removal of the requirement that LRS's be situated on the same property as their associated pub or bar. The third is the closure of 11 government liquor stores (1 in Burnaby – Royal Oak and Rumble), which was announced on 2004 November 02. Together, these policies operationalize the province's privatization programme for its smaller liquor stores.

While only one Burnaby store (Royal Oak and Rumble) was included in the province's announcement of government liquor store closures in 2004 November, it is important to

note that two other government liquor stores could potentially close over the next few months. These include the government liquor stores at Kensington Shopping Centre in north Burnaby, and the Old Orchard Shopping Centre in Metrotown. Staff has recently been advised by the LDB that these closures were unanticipated, a result of having been unable to obtain an extension of their respective leases. This is due in large part to being “out-bid” by other parties wanting to locate LRS establishments at these locations which have prevailing liquor store zoning. It is noted that the four remaining government liquor stores are also located in leased tenant spaces. While considered highly unlikely, it is conceivable that the four remaining stores could have similar difficulties to the Kensington and Old Orchard stores in securing lease extensions in the future, especially if the moratorium on new LRS facilities is lifted once again.

2.2 *Potential Land Use Implications*

The lessons learned from other jurisdictions which privatized their liquor stores have provided some valuable information related to potential land use implications for a privatized system in BC. These lessons show that privatization could have substantial adverse public health and social impacts on local governments and neighbourhoods. The principal issue is the increased accessibility of liquor resulting from the increased number of private liquor stores. These impacts generally include:

- increased access by minors – concerns have been raised about the likelihood that increased numbers of private liquor stores, with characteristically longer hours of operation, could translate into improved access to liquor by minors¹;
- greater impaired driving incidents – studies have shown that increased alcohol availability and densities made possible through increases in the number of liquor stores can lead to more impaired driving incidents²; and
- increased break-ins, assaults and robberies at liquor stores – crime statistics from urban centres which have experienced liquor store privatization confirm that increases in violent crimes involving break-ins, robberies and assaults at liquor stores are correlated with privatization³. This impact is particularly concerning in

¹ See Glenn, T. (May 1997). The social consequences of privatizing liquor and beer stores (Current Issues Paper #187). Toronto, ONT: Ontario Legislative Research Service and Single, E. (1995, November 20).

² DeJong, W. & Hingson, R. (1998). Strategies to reduce driving under the influence of alcohol. Annual Review of Public Health, 19, 359-378; Centre for Addiction and Mental Health, (October 2004). Retail alcohol monopolies and regulation: preserving the public interest position paper. Toronto, ONT: University of Toronto. See also letter from Andrew Murie, National Executive Director for MADD Canada, to BC Solicitor General Rich Colman (May 27, 2003), www.madd.ca.

³ Giesbrecht, N. (December 1995). Proposed Privatization of retail alcohol sales in Ontario: Health, social, economic and safety implications. Toronto, ONT: Addiction Research Foundations; Flanagan, G. (June 2003). Sobering Result: The Alberta liquor retailing industry ten years after privatization. Ottawa, ONT: Canadian Centre for Policy

relation to private liquor stores, given their longer hours of operation, typically smaller scale, and fewer staff relative to most government liquor stores.

In terms of the City of Burnaby's reaction to the privatization of BC liquor stores, it is considered prudent to develop a land use framework which takes into account the foregoing potential social problems.

Alluded to above is also the notion that the City has worked in cooperation with the province for decades with respect to the location and operation of its liquor stores. To that extent, the City has been working with a "known quantity" insofar as minimum staffing standards, maximum hours of operation and quality of service to its customers (i.e., refusing service to minors and intoxicated persons) are concerned. Given the relative uncertainty associated with the potential proliferation of LRS's, the need for municipal controls for locating and operating private liquor stores is warranted.

2.3 *Proposed Zoning Bylaw Amendments*

A key finding of a study produced by the Consumer's Association of Canada cited the need for effective municipal zoning and business licensing in a privatized liquor store system. In light of the potential negative impacts related to the privatization of liquor stores, both at a broad and community level, it is proposed that a process which gives Council greater control over the location of new private liquor stores (LRS's) in Burnaby be established as a prudent, cautious approach. This control could best be achieved through amendments made to the Burnaby Zoning Bylaw that differentiate between government liquor stores and LRS's. Accordingly it is proposed that the Burnaby Zoning Bylaw be amended in the following manner:

Definitions (Section 3.0)

As previously mentioned, "Liquor Store" is currently defined in Section 3.0 of the Zoning Bylaw as:

- (a) *A government liquor store, a government beer store, a government wine store or an agency established by the general manager under the Liquor Distribution Act, or*
- (b) *A licensee retail store licensed under the Liquor Control and Licensing Act to sell liquor for off-premises consumption.*

Alternatives and Parkland Institute; John J. DiIulio, Jr. (Spring 1996). "Broken bottles alcohol, disorder, and crime", *Brookings Review*, The Brookings Institution.

Firstly, it is proposed that the definition of “Liquor Store” be amended by removing item (b), the reference to LRS’s, so that the definition is exclusive to government liquor stores. Secondly, it is proposed that a separate definition for “Licensee Retail Store” be created using a definition similar to the following:

A retail store which is licensed under the Liquor Control and Licensing Act to sell liquor for off-premises consumption.

Uses Permitted (Sections 302 and 303)

Changes to the definition of “Liquor Store”, would also necessitate amendments to the zoning districts in which liquor stores are permitted. Liquor stores are currently permitted in the C2a Community Commercial and C3a General Commercial Districts. It is noted that the “a” subscript zoning category precludes liquor stores as outright permitted uses in the C2 and C3 Districts. Rather, liquor stores are required to obtain the approval of Council through the rezoning process. The proposed definitional amendments will not require any changes to the C2a and C3a Districts themselves, but because a new definition for licensee retail stores is being proposed, a new subscript zoning category is necessary. As such, it is proposed that licensee retail stores be given the “h” subscript zoning category, and included in the C2 and C3 Zoning Districts.

These proposed amendments to the Burnaby Zoning Bylaw essentially mean that government liquor stores are unaffected by the changes, but that any new LRS must undergo a rezoning process to either the C2h or C3h District.

2.4 *Locational Criteria*

With regards to the criteria utilized for assessing rezoning applications to the C2h and C3h Commercial Districts, this Department’s support for individual applications would be dependent upon each applicant demonstrating that the proposed LRS would generally benefit the community and indicate compatibility with nearby existing and planned uses.

The core factors that would be considered in making this assessment would include:

1. A reasonable distribution of both government liquor stores and LRS’s that would allow these stores to sufficiently serve the Municipality while avoiding a concentration of stores in any one area.
2. LRS establishments should not exceed a gross floor area in the order of 4,500 sq. ft.
3. Observance of a reasonable minimum distance from the following uses:

- a. private and public schools - especially secondary schools (\pm 500 m).
- b. senior citizens' housing development and care facilities (\pm 500 m).
- c. other LRS's or government liquor stores (\pm 500 m).
- d. Adjacent residential dwellings and public parks.

Applications for LRS's will also be assessed in terms of how well they are oriented away from the above land uses and any physical separation therefrom to minimize conflicts. Any mixed-use projects involving an LRS would need to be assessed in terms of their compatibility and appropriate integration with nearby residential uses.

4. Adequate vehicular, loading and pedestrian circulation on the site, including the satisfaction of all parking requirements on the site.

It is believed the preceding criteria would ensure that LRS facilities are appropriately located in commercial areas, and in such a way that would minimize any potential land use conflicts with nearby properties and other land uses. Specific response and variance to these general guidelines would be determined in the context of a rezoning application to either the C2h or C3h districts, and the potential impacts the proposed facility would have on the neighbouring community. As well, consideration as to the urban versus more suburban context of a proposed liquor store site (e.g., town centres as opposed to more locally oriented commercial service centres) would be taken into account in the application of these locational criteria.

2.5 *Operational Criteria*

Dovetailing the recommended locational criteria by which staff would assess rezoning applications involving LRS's are also some proposed operational criteria. As with the general locational criteria, the operational criteria would be used to evaluate the suitability of LRS rezoning applications in terms of their impacts on surrounding land uses. The specific factors that would be considered in making this assessment would include:

- Business hours – the province permits LRS establishments to be open from 9:00 a.m. to 11:00 p.m., seven days per week. Given that hours of operation could have significant impacts on adjoining land uses, especially residential, it is proposed that business hours be determined through the rezoning process and based on any anticipated community impacts. The established business hours would be formalized through registration of a Section 219 Covenant. It should be noted that private liquor stores in Burnaby typically close at 11:00 p.m., seven days per week. To date, no pattern of problems has been reported by the RCMP regarding this closing time, however, should problems arise in the future, Council could make amendments to the Burnaby Business Licence Bylaw which could restrict operating hours on a general basis.

Regarding business hours, LDB liquor stores currently operate on the basis of an assortment of closing times, ranging from 6:00 p.m. to 9:00 p.m. on weekdays and as late as 11:00 p.m. on weekends. The LDB store at Highgate Village is the only government liquor store in Burnaby with Sunday openings. These hours were established independently as the number of government liquor stores evolved over time in Burnaby, and have come to be accepted by the communities in which they are located. As for the operating hours for LRS's, it is proposed that they be determined on an individual basis and be related to anticipated neighbourhood impacts and the characteristics and compatibility of surrounding land uses.

- For safety and security purposes, there should be a minimum of two (2) employees present at all times.

These proposed locational and operational criteria/guidelines are intended to provide a comprehensive assessment framework for staff in reviewing rezoning applications for private liquor stores.

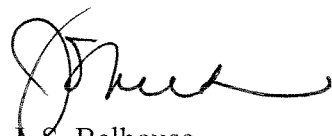
3.0 LEGAL CONFORMITY:

As discussed above, the province's privatization program for its liquor stores has necessitated some changes to the Burnaby Zoning Bylaw in order to provide Council with the opportunity to influence the location of new LRS facilities. Upon the amendments to the definition of "Liquor Store", the creation of a separate definition for "Licensee Retail Store" and addition of the new (h) zoning category applicable to the C2 and C3 commercial districts in the Burnaby Zoning Bylaw through Final Adoption of the zoning bylaw text amendment, approximately seven (7) existing LRS establishments in Burnaby would become legally non-conforming. As such, it is proposed that the existing, operating, LRS's be concurrently rezoned to the applicable C2h or C3h zoning district in order that they conform to the new zoning for private liquor stores. Therefore, unless otherwise directed by Council, staff will initiate the rezoning of six of the seven existing LRS establishments. It is noted that the LRS at Royal Oak and Rumble is proposed not be rezoned together with the other six stores given its current outstanding rezoning application. Finally, it is noted that all existing LRS establishments currently have operating hours which extend to 11:00 p.m., seven days per week. Their rezoning to the new "h" category by the City will not affect their hours of operation. As mentioned, no patterns of complaints have been received from the R.C.M.P. arising from existing LRS hours of operation, and thus no changes are proposed. Should these business hours prove to be a nuisance at some point in the future, Council could always amend the Burnaby Business Licence Bylaw as a means of reducing hours of operation.

4.0 CONCLUSION:

This report responds to a Council direction that staff pursue a review of the Burnaby Zoning Bylaw as it pertains to government liquor stores and licensee retail stores. The privatization of BC liquor stores is a very complicated subject, and one through research on the experience and views of others, indicates that it could have significant social and important land use-related considerations.

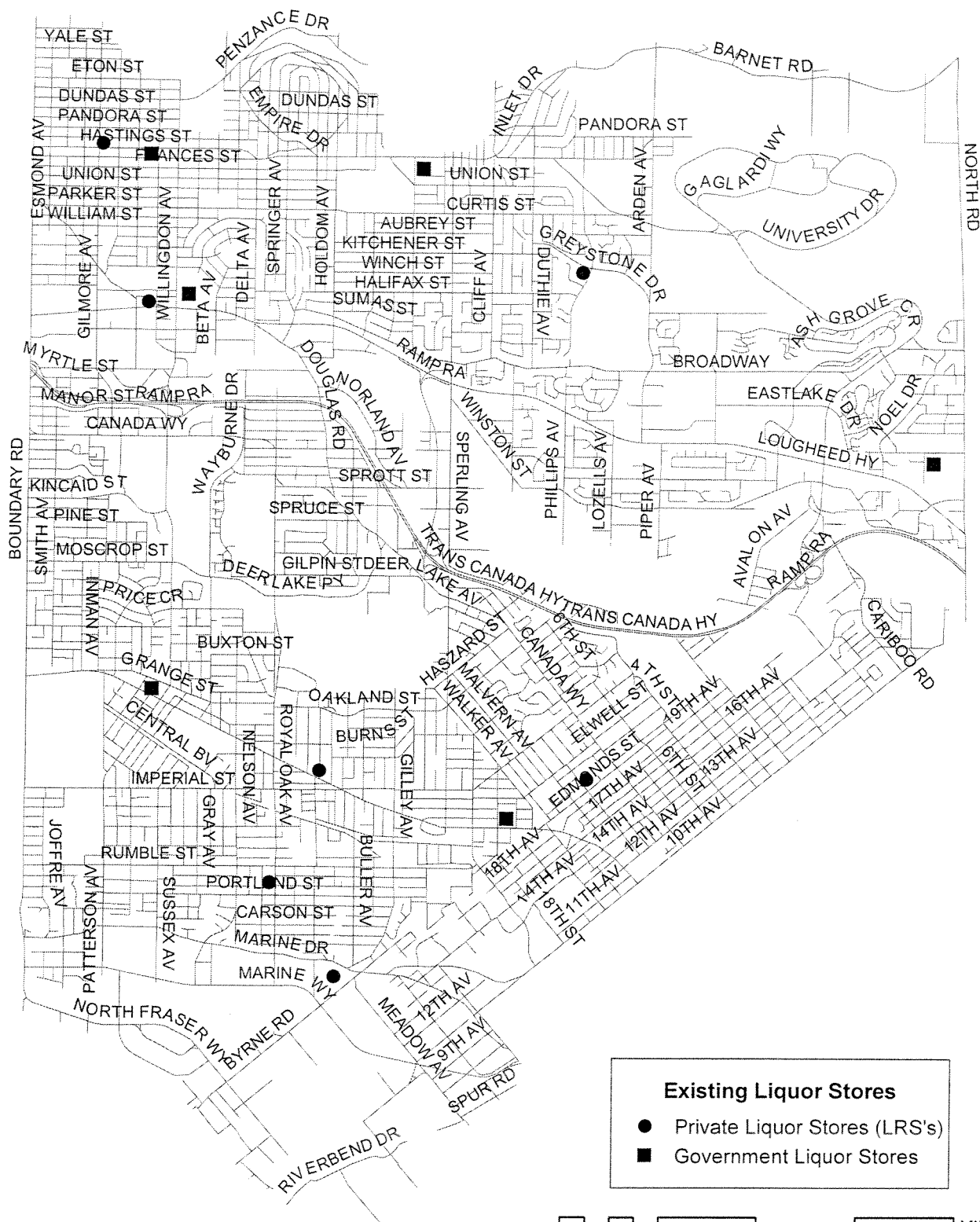
Given this, this report is recommending that Council adopt a proactive approach in creating a separate zoning category and associated guidelines to help ensure a higher level of control and confidence in locating private liquor stores within the community. As such, some minor amendments to the Burnaby Zoning Bylaw are proposed including definitional amendments that would separate government liquor stores from LRS's. Moreover, a new (h) zoning sub-category, which would allow LRS's as a separate and distinct permitted use, is proposed for the C2 and C3 Commercial Districts. These changes would necessitate all applicants for a new LRS establishment to seek Council approval through the rezoning process. Requiring new LRS facilities to go through the rezoning process is recommended, as it would provide more certainty with regards to future land use decisions and Council's ability to influence the location of LRS facilities in Burnaby. It is felt that the foregoing amendments to the Burnaby Zoning Bylaw, in addition to the accompanying proposed locational and operational guidelines, would provide an appropriate approach in addressing the potential social and land use issues associated with private LRS establishments.



J.S. Belhouse
Director Planning and Building

EK:gk
Attachment

cc: Chief Licence Inspector
RCMP Officer-In-Charge
Chief Building Inspector
City Solicitor
City Clerk



Location of Liquor Stores In Burnaby

Sketch #1

