



Item
Meeting2010 April 12

COUNCIL REPORT

TO: CITY MANAGER **DATE:** 2010 April 07

FROM: DIRECTOR PLANNING AND BUILDING **FILE:** 46000 06
Reference: Liquor Licence - General

SUBJECT: CHANGES TO PROVINCIAL LIQUOR LICENSING POLICY

PURPOSE: To provide Council with information on recent changes in Provincial liquor policy.

RECOMMENDATION:

1. **THAT** this report be received for information purposes.

REPORT

1.0 BACKGROUND INFORMATION

On 2009 December 07, Council directed staff to prepare a report on the liquor policy amendments referred to in two items of correspondence from the Ministry of Housing and Social Development. Policy Directive #09-06 from the Liquor Control and Licensing Branch (LCLB) contains three items related to Licensee Retail Stores (LRS) effective on 2009 December 02. Policy Directive #09-07 contains one item related to the Liquor Control and Licensing Regulation effective on 2009 December 02; and two items related to the Violation Ticket Administration and Fines Regulation effective on 2010 January 01. This report responds to Council's request.

2.0 CHANGES TO LICENSEE RETAIL STORE (LRS) POLICY POLICY DIRECTIVE #09-06

2.1 Qualifying Liquor Primary License

Existing Policy

Previous Provincial regulations required an LRS and the related Liquor Primary establishment to be owned by the same licensee. While requiring the same licensee, it was also possible for a licensee to hire a third party to operate the associated LRS. As such, while under the same ownership, an LRS and associated Liquor Primary establishment could effectively be independently operated.

Amendment

The 2009 December Policy Directive eliminates the requirement that an LRS licensee also own and operate the associated Liquor Primary establishment. The Directive also eliminated any required linkages between an LRS and a Liquor Primary establishment. As a result, the operation of an LRS is no longer dependent upon the status of the associated Liquor Primary establishment. Therefore, where a Liquor Primary licence is suspended, no longer meets Provincial criteria for licensing, or

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ceases to operate, there is no effect on the operation of the LRS. Prior to this policy change, if a Liquor Primary establishment ceased operations, the associated LRS establishment would also be required to cease operations.

Discussion

The above recent amendments to the Liquor Control and Licensing Regulations will allow for the independent operation of LRS and Liquor Primary establishments and for the transfer of ownership of either to another licensee. The policy change eliminates the previously required linkages between an LRS and a Liquor Primary establishment. The Province has advised that the reason for the change is to allow for the independent operation of LRS and Liquor Primary establishments.

The policy does not change the business management of liquor stores in Burnaby given their current ability to effectively be independently operated. However, it is noted that this policy change would allow for the independent sale and operation of these two components. The retail sale of liquor has undergone a process of consolidation in other jurisdictions that have witnessed smaller, individually-owned LRS acquired and consolidated under the single ownership of larger retail chains. Staff have sought to source research into the potential implications of the policy change, however, little research exists related to the outcomes from a public impact point of view of the consolidation of liquor retail stores into larger retail chains. As such, the full implications of this policy change are not known at this time.

The change to eliminate any required linkages between an LRS and a Liquor Primary establishment may result in some LRS establishments seeking to relocate their operation, independent of the associated Liquor Primary establishment, to another location within the same municipality or an adjacent municipality. On 2005 February 07, following Provincial government changes to the liquor distribution system, Council received a report from this Department that reviewed the Burnaby Zoning Bylaw as it pertains to government liquor stores and LRS. The report recommended that Council adopt a proactive approach in creating a separate zoning category to regulate the location of LRS in Burnaby.

On 2005 April 11, Council amended the Zoning Bylaw to create the C2h and C3h zoning categories for all new LRS, which ensures that Council approval through the rezoning process is required for all new LRS applications. Requiring new LRS establishments to go through the rezoning process provides for certainty with regards to Council's ability to approve the location of LRS facilities in Burnaby. In addition, Council-adopted locational and operational guidelines, provide an appropriate approach in addressing the potential social and land use issues associated with LRS establishments. As a result, the location of LRS in Burnaby are subject to Council's approval in-line with Council's Liquor Store Location Framework for Burnaby adopted on 2006 May 8.

With the change in Provincial LRS regulations, the applicability of Council's Liquor Store Location Framework with respect to LRS remains unaffected. As such, no changes to Burnaby's regulations and processing procedure are required in relation to the Provincial change in regulations related to LRS.

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2.2 Relocation of an LRS

Existing Policy

The 2009 December Policy Directive reconfirmed Provincial policy that allows an LRS to be located independent of the associated Liquor Primary establishment. The Provincial policy continues to permit an LRS to relocate to another location within the same municipality, or if relocating to a location outside the municipality, up to 5 km from the site of the existing LRS.

Amendment

At the time of writing this report, staff received Policy Directive #10-02 from the Ministry of Housing and Social Development. This Directive, effective 2010 February 15, amends the original 0.5 km separation requirement between an existing and a new LRS to 1 km. The LCLB indicates that this further policy change is intended to provide greater market certainty for LRS operators and prevent a concentration of LRS operations. Relocation applications will not generally be approved by the LCLB if the proposed site is within 1 km of an existing LRS or the site of an LRS application in progress.

Discussion

LCLB regulations continue to require any proposed LRS location have the appropriate zoning. No changes to Burnaby's regulations and processing procedures are required in relation to this Provincial change in regulation regarding re-locations as Council approval is required for rezoning to the C2h and C3h District in line with Council's adopted Liquor Store Location Framework for Burnaby. It is noted that the Provincial government, as of 1992, has imposed a moratorium on all new LRS applications.

2.3 Stand Alone Requirement

Existing Policy

The 2009 December Policy Directive restates that an LRS may not appear to be associated with another business in the near vicinity and the LRS must be located in:

- A permanent, free-standing building that does not contain another business; or
- If in a building in which there are other businesses, the LRS must have its own entrance and exit separate from any other business and a solid floor-to-ceiling wall between the LRS and any other business.

Discussion

While included in the 2009 Directive, it is noted that this Provincial policy remains unchanged from its introduction in April 2003.

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3.0 CHANGES TO THE LIQUOR CONTROL AND LICENCING REGULATION POLICY DIRECTIVE #09-07

3.1 Inspector Discretion to Issue Contravention Notices

Existing Policy

One of the mechanisms used by the LCLB to ensure compliance with Provincial regulations is to inform the licensee of an establishment when a contravention appears to be present. This is done with a contravention notice. Since 2001, LCLB policy has stated that liquor inspectors are to issue a contravention notice for every contravention observed, whether minor and of an administrative nature or more serious, in an effort to ensure consistency of treatment of licensees and fairness across the Province. Over the past few years, the practice, however, has been to focus on “high-risk offender” establishments with an emphasis on more detailed and vigilant inspections. High-risk offender establishments include those with a history of more serious public safety offenses, such as serving liquor to minors, overcrowding and causing public disturbance.

Amendment

Through the 2009 December Policy Directive, the Provincial government affirmed that liquor inspectors have the authority to exercise discretion in the issuance of a contravention notice for offenses of a more minor or administrative nature. It is also noted that liquor inspectors will not exercise discretion with respect to serious contraventions related to public safety.

Under the Policy, Provincial liquor inspectors may now consider the following factors when exercising discretion in the issuance of a contravention notice for minor or administrative matters:

- The number of contraventions identified during the inspection;
- The circumstances of the contravention;
- Whether the contravention is an isolated incident;
- Whether the contravention was repeated or continuous;
- Whether the contravention was deliberate;
- Whether any economic benefit was derived by the licensee from the contravention; the licensee’s cooperativeness and efforts to correct the contravention;
- Previous contraventions of a similar nature;
- The compliance history of the licensee and establishment; and
- Any other relevant factors.

In situations where a liquor inspector exercises discretion, and no contravention notice is given, the inspector is to record detailed notes of observed contraventions and their resolution to ensure complete compliance histories are maintained for licensed establishments.

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Discussion

The Province has indicated that the intent of the policy change is to support the focusing of Provincial staff resources to ensure compliance with Provincial regulations for high-risk offender establishments for more serious offenses. With the ability of liquor inspectors to exercise discretion with respect to issuing contraventions of minor or administrative nature to licensees, the intent of the change is to allow more serious contraventions related to public safety including serving liquor to minors, overcrowding and causing public disturbance, to be more effectively dealt with.

4.0 CHANGES TO THE VIOLATION TICKET ADMINISTRATION AND FINES REGULATION - POLICY DIRECTIVE #09-07

4.1 Inspector Authorization to Issue Violation Tickets

Existing Policy

In addition to the use of contravention notices to ensure compliance with Provincial liquor regulations, a further mechanism used by the LCLB is the issuance of violation ticket fines. However, until recently, Provincial liquor inspectors did not have authority to issue violation tickets, which are most commonly issued by police.

Amendment

Effective 2010 January 01, liquor inspectors have been granted authority to issue violation tickets for the following offences in licensed establishments:

- Purchase by a minor;
- Consumption by a minor;
- Minor in liquor establishment;
- Minor in possession;
- Presentation of false identification;
- Supply liquor to intoxicated person;
- Permit intoxicated person on premises; and
- Failure by a manager or employee to complete the prescribed Serving It Right responsible beverage service program.

Discussion

Most of the violation tickets to be issued by inspectors are expected to be issued to patrons of licensed establishments, and minors in particular, with the intention of ensuring minors are more accountable for their own behaviour when entering licensed establishments and purchasing liquor fraudulently. Violation tickets may also be issued to staff and operators of the establishment. The Province has advised that the change is intended to increase the opportunity to issue violation ticket fines, in support of police, in achieving compliance with the *Liquor Control and Licensing Act* and regulations.

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4.2 Increased Violation Ticket Fines for Liquor Offences

Existing Policy

Violation ticket fines for offences under the *Liquor Control and Licensing Act* were originally introduced in 1986 and had remained unchanged since their introduction.

Amendment

This 2009 Policy Directive adjusts the fines for violation tickets. The new fine levels were set following a review of liquor-related fines for similar infractions in other provinces. The aim of the review was to establish fine levels that act as a deterrent to liquor-related offences. In most cases, the original LCLB fine levels were doubled. The new fine levels result in violation ticket fine amounts that exceed fine amounts in other provinces.

The following table provides a comparison of similar liquor-related fines in other provinces. The new British Columbia ticket violation fine amounts under the *Liquor Control and Licensing Act*, as of 2010 January 01, are shown in bold.

Fine	BC original	BC new	Alberta*	Ontario	Saskatchewan	BC Rank**
Purchase by minor	\$115	\$230	\$115	\$125	\$180	1
Consumption by minor	\$115	\$230	\$115	\$125	\$180	1
Minor in liquor establishment	\$115	\$230	\$115	\$65	\$180	1
Minor in possession	\$58	\$230	\$115	\$125	\$180	1
Presentation of false identification	\$115	\$230	n/a	n/a	n/a	n/a
Permit gambling/disorderly conduct	\$115	\$230	\$230	n/a	n/a	1
Consume liquor in a public place	\$115	\$230	\$115	\$125	\$130	1
Intoxicated in a public place	\$58	\$115	\$115	\$65	\$70	1
Supply liquor to intoxicated person	\$115	\$230	n/a	n/a	n/a	n/a
Permit intoxicated person on premises	\$115	\$230	n/a	n/a	n/a	n/a
Possess open liquor in a motor vehicle	\$58	\$230	\$115	\$215	\$180	1

*Alberta fine levels are currently under review.

**BC's rank relative to other provinces with similar liquor-related fines.

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Discussion

The increased ticket violation fine amounts under the *Liquor Control and Licensing Act* are intended to provide an increased deterrent to infractions of Provincial liquor regulations. Together with the new authority granted to Provincial liquor inspectors to issue violation tickets as discussed, the policy changes are intended to reduce incidents of liquor-related offenses.

4.0 SUMMARY

This report provides Council with an overview of changes to Provincial liquor licensing policy as contained in Policy Directives #09-06, #09-07 and #10-02. As outlined, the changes relate to Licensee Retail Stores, the Liquor Control and Licensing Regulation and the Ticket Administration and Fines Regulation.

There are no changes to Burnaby's adopted regulations and processing procedures required in relation to the Provincial changes in regulation.

This is for the information of Council.



B. Luksun, Director
PLANNING AND BUILDING

SMN:gk

cc: Director Finance
O.I.C. – R.C.M.P.
Chief Licence Inspector
Chief Building Inspector
City Solicitor