



Item.....
Meeting..... 2010 January 18

COUNCIL REPORT

TO: CITY MANAGER **DATE:** 2010 January 07
FROM: DIRECTOR PLANNING AND BUILDING **FILE:** 49500 20
Reference: REZ#09-28
SUBJECT: REZONING REFERENCE #09-28
1908 ROSSER AVENUE (UNIT #2)
RESPONSE TO PUBLIC HEARING ISSUES
PURPOSE: To respond to issues raised at the Public Hearing for Rezoning Reference #09-28.

RECOMMENDATION:

1. **THAT** a copy of this report be sent to the applicant who spoke at the Public Hearing for Rezoning Reference #09-28.

REPORT

1.0 BACKGROUND

On 2009 December 15, a Public Hearing was held for Rezoning Reference #09-28. The subject rezoning application proposes exterior changes to the building to accommodate a street-level patio for a restaurant use in one of the development's street-level commercial-retail units. The rezoning is also necessary to permit a parking reduction to accommodate the proposed 200 seat restaurant within the commercial component of the overall mixed-use development involving a high-rise office building of 11 storeys oriented to Lougheed Highway, a high-rise apartment tower of 30 storeys oriented to Buchanan Street, ground-level commercial along Lougheed Highway and Rosser Avenue, and townhousing along Buchanan Street, which was developed in accordance with the Brentwood Town Centre Development Plan (see **attached** Sketch #1). At the Public Hearing, the applicant for the subject rezoning amendment inquired as to the possibility for changes to the Section 219 covenant prohibiting live or amplified music and restricting patio hours required in connection with the proposed rezoning amendment. As requested by Council at the Public Hearing, this report provides a staff response to the issue which was raised.

2.0 ISSUE RAISED

Issue: Patio hours and live or amplified music. The applicant for the subject rezoning amendment requested longer patio hours than that which the proposed Section 219 Covenant indicates. The applicant also requested that the Section 219 Covenant allow for amplified and/or live music.

Response: As noted in the Public Hearing report, a prerequisite to approval of the subject rezoning amendment bylaw is the granting of a Section 219 Covenant to limit the hours of use of the patio to 11:00 a.m. to 10:00 p.m., Monday to Saturday, and 12:00 noon to 10:00 p.m. on Sundays; as well as prohibit any amplified or live music. The applicant inquired about amending the covenant to extend the use of the patio to 11:00 a.m. to 11:00 p.m., Monday to Friday and 10:00 a.m. to 11:00 p.m. on Saturdays, Sundays and holidays; as well as consider permitting amplified or live music on the patio.

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From: Director Planning and Building
Re: Rezoning Reference #09-28
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Regarding hours of patio use, it is noted that the 10:00 p.m. closures indicated in the Section 219 Covenant are derived from the Noise or Sound Abatement Bylaw, which uses 10:00 p.m. as the criteria for reduced noise levels in commercial and residential districts. In light of staff's experience with complaints from residences affected by patio noise, and given that the proposed patio is in a mixed-use context and thus there is potential for impacts to neighbouring residential uses, the request for later patio hours cannot be supported. In terms of the request for a 10:00 a.m. patio opening on Sundays, it is noted that such an opening time would be inconsistent with other establishments in Burnaby and due to its mixed-use context may have negative effects on surrounding residential uses. An earlier opening time of 11:00 a.m. (from 12:00 p.m.) on Sundays, however, could be supported as it is more consistent with other similar establishments in Burnaby which have proven to have minimal impact on surrounding residential uses. Unless otherwise directed by Council, staff will make the appropriate adjustment to the Section 219 Covenant prior to Final Adoption of the amendment bylaw to permit 11:00 a.m. openings on Sundays.

With respect to the request for live and/or amplified music on the proposed patio, it is noted that the practice of its prohibition arose from past situations where its impacts on surrounding residential uses generated numerous significant complaints. Given the mixed-use context of the proposed patio, there is potential for neighbourhood impacts, and as such the request cannot be supported. With regard to the question of live and/or amplified music on patios of competitors in the area, it is acknowledged that three nearby restaurants (Milestones, Earles and Cactus Club) with patios do have amplified music, but it is also noted that their context is very different from that of the proposed patio. Whereas the proposed patio is in a mixed-use area, the three other patios which have amplified music are in a purely commercial context where the impacts to residential uses is negligible, as demonstrated by the lack of noise complaints for these three restaurant patios. It is also worth noting that they were approved prior to current criteria for liquor licence approvals and that two of them (Milestones and Cactus Club) were approved through the Preliminary Plan Approval process which does not provide the same opportunities for the City to determine conditions of use as does the rezoning process.

3.0 CONCLUSION

In conclusion, due to the proposed restaurant patio's mixed use context, the request for later hours and amplified and/or live music cannot be supported because of the anticipated negative impacts to surrounding residential uses. A minor amendment to the Section 219 Covenant to allow for 11:00 a.m. openings on Sundays can be supported given consistency with other similar establishments in the City and the lack of concerns arising therefrom.

This is for the information of Council.



B. Luksun
Director Planning & Building

EK:gk
Attach

cc: City Clerk
Director Engineering

