



# Corporate *NO: R209*

# Report *COUNCIL DATE: October 21, 2002*

<b>REGULAR COUNCIL</b>			
<b>TO:</b>	<b>Mayor &amp; Council</b>	<b>DATE:</b>	<b>October 22, 2002</b>
<b>FROM:</b>	<b>General Manager, Planning &amp; Development</b>	<b>FILES:</b>	<b>4320-50</b>
<b>SUBJECT:</b>	<b>Changes to Liquor Licensing Regulations and Proposed Zoning By-law Amendments</b>		

## RECOMMENDATION

The Planning and Development Department recommends that Council:

1. Receive this report as information;
2. Approve the amendments to Surrey Zoning By-law, 1993, No. 12000 and Surrey Zoning By-law, 1979, No. 5942 (collectively the "Zoning By-law"), as documented in Appendix I;
3. Instruct the Acting City Clerk to bring forward the necessary amendment by-laws for the required readings and to set a date for the Public Hearing;
4. Authorize the Mayor to forward a letter to the Minister of Public Safety and Solicitor General expressing concern about the process followed and the relatively abrupt introduction of the new liquor-licensing regulations, without due consideration of local government concerns and recommending that the regulations be further amended to require local government input in relation to applications for seating capacity increases for liquor-licensed establishments; and
5. Authorize the Acting City Clerk to forward a copy of this report to the British Columbia & Yukon Hotels' Association and the British Columbia Liquor Licensee and Retailers Association.

## INTENT

The purpose of this report is to provide an update to Council on recent changes to liquor licensing regulations that have been approved by the Provincial Government to take effect on December 2, 2002; to comment on the concerns expressed by the British Columbia & Yukon Hotels' Association and the British Columbia Liquor Licensee and Retailers Association and to recommend changes to the Zoning By-law to address the liquor licensing regulation changes.

## BACKGROUND

The following summarizes the key dates pertaining to Provincial liquor licensing changes, communications received by Council from some industry representatives and related Corporate Reports submitted to Council:

- On December 1, 2000, new liquor licensing regulations came into effect, enabling opportunities for patron capacity increases within existing licensed establishments (seating capacity could be increased by up to 50% or up to the building occupancy capacity, whichever is the lesser, subject to local government input) and allowing designated food optional ("DFO") areas within existing restaurants (DFO areas could be 10% of the licensed capacity or 20 seats, whichever is the lesser) subject to local government input.
- On March 26, 2001, Council considered Corporate Report No. R061 and instructed staff to proceed with bulk processing of increased patron capacity applications.
- On November 5, 2001, Council approved Corporate Report No. L005, which recommended capacity increases of up to 50% for 14 neighbourhood pubs in Surrey.
- On November 5, 2001, Council approved Corporate Report No. R228, which recommended that Council authorize staff to process applications for DFO areas within existing restaurants.
- On March 15, 2002, the Minister of Public Safety and Solicitor General announced major liquor licensing changes, including the lifting of the moratorium on new applications for licensed retail stores (i.e. cold beer and wine stores) and modifying maximum capacity constraints such that they no longer would be set by regulation, but rather would be determined on a case-by-case basis, subject to local government input.
- As of April 2, 2002, spirits were authorized to be retailed from cold beer and wine stores.
- At the April 15, 2002 Regular Council meeting, Council received a letter from the British Columbia & Yukon Hotels' Association expressing concern about dual licensing and alcohol becoming more accessible (Appendix II).
- On August 12, 2002, the Provincial Government announced changes to liquor regulations and policies, which varied somewhat from the previous announcements and advised that the new changes would come into effect on December 2, 2002.
- On September 30, 2002, Council heard a delegation from the British Columbia Liquor Licensee and Retailers Association (representing pubs, cabarets and hotels), expressing concern, primarily with the automatic increase in the lounge (liquor only) seats in restaurants (Appendix III).
- On December 2, 2002, new liquor licensing regulations and policies are scheduled to come into effect in the Province.

## DISCUSSION

The Provincial Government has been working towards streamlining and modernizing liquor licensing regulations and policies in the Province and enabling liquor licensing inspectors to focus on public safety issues. The March 15, 2002 announcement, by the Minister of Public Safety and Solicitor General, included the following major liquor policy changes:

- There will be two liquor license classes: "liquor primary" and "food primary";

- Maximum patron capacities will no longer be set by regulation;
- Licensed capacity will be determined on a case-by-case basis and will be subject to local government input;
- The requirements for certain types of license holders to have non-licensed facilities, such as hotel rooms, will be removed;
- Licensees will be able to apply for any hours of service between 9:00 a.m. and 4:00 a.m., subject to local government support for hours beyond midnight;
- Cabinet has given approval to the lifting of the moratorium on new applications for cold beer and wine stores; and
- As of April 2, 2002, spirits can be retailed from cold beer and wine stores.

The August 12, 2002 Provincial announcement, regarding changes to the liquor licensing regulations that will take effect on December 2, 2002, although generally in accordance with the March 15, 2002 announcement, included some modifications. The most significant changes to the regulations are highlighted below.

6. The following changes will occur automatically on December 2, 2002:

- There will be two classes of liquor licenses: "food primary" and "liquor primary". The Liquor Control and Licensing Branch ("LCLB") will convert existing licenses to one of these two categories on December 2, 2002.
- A number of regulations and policies will be eliminated as they are not needed to ensure public safety (e.g. server attire will not be regulated, partially consumed bottles of wine can be taken home, etc.).
- Any business primarily in the hospitality, entertainment or food and beverage business (except youth-oriented businesses such as video arcades and movie theatres) will be eligible to apply to the LCLB for a liquor license.
- Associated non-licensed services such as hotel rooms or recreation facilities are no longer required.

7. The following changes will come into effect on December 2, 2002, but related applications will require LCLB approval:

- Liquor primary licensees may apply to the LCLB to increase the licensed capacity to the building occupant load as defined by the Fire Code and Building Code (previously, local government input was proposed to be required).
- Restaurants may apply to the LCLB for a small lounge area (i.e. designated food optional area), with seating up to 20% of the total patron capacity or a maximum of 40 seats (previously, local government input was required and the maximum was the lesser of 10% or 20 seats).

8. The following changes will come into effect on December 2, 2002, but related applications will require LCLB approval and a resolution from local government:

- Licensees may apply to be open at any time between 9:00 a.m. and 4:00 a.m., subject to a resolution from local government.
- New liquor primary licenses and private club licenses.

- The following amendments to existing licenses:

- (i) In the case of liquor primary or private club licenses – later hours, increased capacity as a result of structural changes, or the addition of a patio; and
- (ii) In the case of restaurants – patron participation entertainment or liquor service after midnight.

Although Surrey is represented in a UBCM Working Group with LCLB staff, the August 12, 2002 announcements occurred abruptly and were not totally consistent with previous announcements or discussions. In particular, the Working Group consistently reminded LCLB staff that local government input should be part of the process related to applications for increased capacity of liquor licensed establishments. It was not expected that the Province would announce that local government input would not be required for increasing licensed capacity of existing establishments.

### Communication Received from Some Industry Representatives

On April 15, 2002, Council received a letter from the BC & Yukon Hotels' Association (Appendix II) expressing concern about dual licensing (i.e. allowing both liquor primary and food primary licenses for one establishment (this has since been modified to two separate license classes)), downloading of Provincial Government responsibilities, alcohol becoming more accessible, increased pressure on police and the financial hardship anticipated by hotel operators as a result of the changes proposed to the liquor licensing regulations.

On September 30, 2002, at a Council-in-Committee meeting, Council heard a delegation from the British Columbia Liquor Licensee and Retailers Association expressing concerns about the potential for increased numbers of liquor-licensed seats in the City without local government input and the potentially longer hours of operation. The British Columbia Liquor Licensee and Retailers Association also submitted a letter to Council regarding their concerns (attached as Appendix III).

### Proposed Zoning By-law Amendments

The distribution and licensing of liquor is primarily a Provincial responsibility and the City relies, to a significant degree, on the Province to ensure that the distribution and consumption of liquor in the City is reasonable and to regulate and enforce the liquor regulations. Land use, however, is a municipal responsibility. Where a land use involves liquor licensing, the City may impose additional conditions under its land use control authority, as prescribed in the *Local Government Act*, to address potential land use related impacts.

Surrey Zoning By-law, 1993, No. 12000 ("Zoning By-law No. 12000") has been reviewed to determine where changes are necessary to ensure that the by-law correlates to the liquor licensing regulations that come into effect on December 2, 2002. In addition, staff has considered where Zoning By-law changes are appropriate to address community impacts that may arise from the new Provincial liquor license regulations. It should be noted that the same exercise was undertaken, with respect to Surrey Zoning By-law, 1979, No. 5942 ("Zoning By-law No. 5942") (as explained in a later section).

### Liquor Primary Establishments

Liquor primary licensed establishments are currently permitted under the following categories in Zoning By-law No. 12000:

- Neighbourhood pubs;
- Recreational uses (e.g. lounges associated with bowling alleys and golf courses);
- Entertainment uses (e.g. cabarets); and

- Tourist accommodation (i.e. hotels and any ancillary licensed lounges, etc.).

Many of the existing commercial zones include neighbourhood pubs as a permitted use. At the time of drafting of the zones, neighbourhood pubs were limited by Provincial regulation to no more than 65 indoor seats and 20 seats on an outdoor patio. With the December 2000 changes to the liquor regulations these original capacity limits are no longer applicable; any liquor primary licensed establishment may seek approval for increased capacity of up to 50% or to the capacity of the building within which it is located, as determined by the Building Code (i.e. building occupancy), whichever is less.

The new regulations that come into effect on December 2, 2002, will enable any liquor primary licensed establishment, including neighbourhood pubs, to increase their licensed capacity to the capacity of the building within which it is located as determined by the Building Code. For existing establishments, local government input is not required. For new liquor primary licensed establishments, a resolution from local government will be required.

Since neighbourhood pubs will no longer be specified or defined in the Liquor Licensing regulations, it is proposed that the definition for "neighbourhood pub", contained in Zoning By-law No. 12000, be modified. The proposed wording is documented in Appendix I, attached to this report.

## Food Primary Establishments

Zoning By-law No. 12000 defines "restaurants" as eating establishments and eating establishments are permitted in nearly all commercial zones and some industrial and residential zones. Depending on the zone, eating establishments are regulated as to size, liquor licensing and type of service (e.g. drive-through).

The Local Commercial (C-4) and Neighbourhood Commercial (C-5) Zones permit eating establishments with a maximum floor area of 370 square metres (4,000 sq.ft.). Similarly, the Special Care Housing 1 (RMS-1) and Special Care Housing 2 (RMS-2) Zones permit eating establishments with a maximum capacity of 35 seats. The Light Impact Industrial (IL) Zone permits coffee shops with a maximum capacity of 35 seats provided they are not licensed by the *Liquor Control and Licensing Act*. The Highway Commercial Industrial (CHI) Zone is the only zone that allows drive-through restaurants.

The regulations that will take effect on December 2, 2002, will allow restaurants to operate a lounge, provided the lounge is limited in size to 20% of the seating capacity of the eating establishment or 40 seats, whichever is less. Local government will not have an opportunity to comment on these licensing requests, unless the lounge is intended to be operated later than midnight on any day; in which case a resolution by City Council is required.

Given that neighbourhood pubs are not permitted in the C-4 Zone, a logical extension would be to prohibit lounge areas within restaurants (eating establishments) in the C-4 Zone. On this basis, it is proposed to amend the C-4 Zone to exclude liquor-licensed eating establishments (see Appendix I). On the other hand, neighbourhood pubs are permitted in the C-5 Zone, therefore, no changes are proposed to the C-5 Zone (i.e. liquor-licensed eating establishments should continue to be permitted).

The RMS-1 and RMS-2 Zones permit small, 35-seat eating establishments. Although not anticipated to be problematic, it is proposed that such eating establishments not be liquor licensed (see Appendix I).

Currently, the IL Zone does not allow liquor licensed establishments. It is proposed that this regulation not change, but that the reference to the legislation be updated (see Appendix I).

Subject to Council approval of the proposed amendments to Zoning By-law No. 12000, should an owner of a lot zoned C-4, RMS-1, RMS-2 or IL seek to operate a licensed eating establishment, rezoning to a Comprehensive Development (CD) Zone would be required.

Due to the possibility of a property being regulated by the C-L Local Commercial Zone under Zoning By-law No. 5942, particularly in older Comprehensive Development (CD) Zones, a text amendment is proposed to the C-L Zone to limit restaurants, cafés and delicatessens to those that are not liquor-licensed (see Appendix I). This is consistent with the proposed amendment to the C-4 Zone in Zoning By-law No. 12000.

To ensure the proposed Zoning By-law amendments are in effect on December 2, 2002, the Public Hearing for the amendment by-law should be held and final adoption should be considered in November 2002. It should be noted that if any authorized use is made non-conforming as a result of these proposed Zoning By-law amendments, the use may continue to operate provided it is in accordance with Section 911 of the *Local Government Act*.

## Comprehensive Development By-laws

In addition to the standard zones contained in Zoning By-law No. 12000 and Zoning By-law No. 5942, the City's Comprehensive Development (CD) By-laws have been reviewed. There are approximately 175 CD By-laws, either approved or in-stream (i.e. the by-law has been introduced, but has not received final adoption) that include eating establishments, restaurants or cafés as a permitted use. Of these 175 CD Zones, 21 are generally based on the C-4 Zone, C-5 Zone or C-L Zone (Zoning By-law No. 5942). To ensure consistency with the proposed amendments to the C-4 and C-L Zones, these 21 CD By-laws have been reviewed to determine if "neighbourhood pub" or any licensed establishment is currently a permitted use.

"Neighbourhood pub" (or a licensed establishment) is a permitted use in five of the 21 CD By-laws. The remaining 16 CD By-laws do not permit neighbourhood pubs (or licensed establishments). To determine if it may be appropriate to restrict any eating establishment on these 16 sites from being liquor-licensed, the Official Community Plan designation was reviewed. Where the designation is not Commercial (nine CD By-laws), liquor licensed establishments may not have been an intended allowable use. On this basis, staff will be reviewing, in more detail, the nine CD By-laws and the sites to which they apply, where neighbourhood pubs are not permitted, but which allow eating establishments, to determine whether an amendment to any of these CD By-laws, to specifically prohibit licensed eating establishments, is appropriate. Where an amendment to a CD By-law is considered necessary, the affected property owner will be notified. The nine properties affected by the subject CD By-laws are listed in Appendix IV. Staff will be forwarding a further report to Council on these CD By-laws in the next two weeks so that the amendment by-laws, if necessary, can proceed to the November Public Hearing and be adopted prior to December 2, 2002, the date on which the new liquor regulations take effect.

## Land Use Contracts

Land Use Contracts ("LUCs") cannot be amended without the owner's consent. Staff has not undertaken a review to determine the number of LUCs that permit restaurants or neighbourhood pubs since the current legislation does not allow any Council-initiated amendments.

## Response to the Industry Concerns

The Zoning By-law amendments proposed in this report are intended to restrict the opening of liquor licensed eating establishments at locations where they were not intended by the City's Zoning By-law without local government input, which is consistent with the requests made by the two industry Associations. It should be noted that the new liquor license regulations are not expected to result in a massive change from the existing situation.

The majority (515 or 82.4%) of Surrey's 625 restaurants have less than 100 seats and 394 or 63% have less than 50 seats. It is unlikely that lounges will be incorporated in these smaller restaurants. Of the 110 larger restaurants in the City, with 100 seats or more, 81% (89 out of 110) are

liquor-licensed and many of these already operate (albeit informally) with a lounge area. However, where the licensing regulation changes could be really noticed, in the neighbourhood scale commercial areas, licensed restaurants are proposed to be prohibited. If Council adopts such an approach, it would be necessary for the property owner in these areas to proceed through a rezoning process if they wish to pursue a liquor licensed establishment.

### Concern with Relatively Abrupt Changes to Liquor Licensing

The licensing regulation changes announced on August 12, 2002, were somewhat different than the previously proposed licensing regulations announced by the Province. Staff from several municipalities, including Surrey, have advised Provincial officials that some additional time should be spent in analysing the potential effects of the proposed changes before the new regulations take effect and that it would be appropriate for the LCLB to seek input from local governments on all applications for seating capacity increases for liquor licensed establishments. The Province has not indicated any willingness to allow such additional time beyond the December 2, 2002 date. On this basis, it is recommended that Council authorize the Mayor to forward a letter to the Minister of Public Safety and Solicitor General expressing concern about the process followed and relatively abrupt introduction of the new licensing regulations without due consideration of local government concerns and recommending that the regulations be further amended to require local government input in relation to applications for seating capacity increases for liquor licensed establishments.

### CONCLUSION

As announced by the Province on August 12, 2002, there will be new liquor licensing regulations that come into effect on December 2, 2002. The intent behind the new legislation is to streamline and modernize liquor regulations and to allow liquor inspectors to focus on public safety issues (i.e. compliance). Some industry representatives have expressed, to Council, their concerns with the new regulations. Staff has reviewed the impact of the pending liquor licensing changes and is recommending some amendments to the Zoning By-law to protect the fundamental intent of various zones in relation to prohibiting liquor licensed establishments from being operated within the zone. The City Solicitor has reviewed this report and is in agreement with its content.

It is recommended that Council approve the amendments to Zoning By-law No. 12000 and Zoning By-law No. 5942 as documented in Appendix I and instruct the Acting City Clerk to bring forward the necessary amendment by-laws for the required readings and the setting of a date for the Public Hearing. Further, it is recommended that the Acting City Clerk forward a copy of this report to the two Associations that expressed concern about the liquor licensing changes. Staff will review the CD By-laws covering the properties listed in Appendix IV, to determine whether amendments to these By-laws should be made in relation to preserving the land use objectives of those By-laws. Where amendments are considered necessary, the affected property owners will be contacted. Staff will forward a further report to Council on these CD By-laws in the next two weeks.

It is further recommended that the Mayor be authorized to forward a letter to the Minister of Public Safety and Solicitor General expressing concern about the process followed and the relatively abrupt introduction of the new liquor-licensing regulations without due consideration of local government concerns and recommending that the regulations be further amended to require local government input in relation to applications for seating capacity increases for liquor licensed establishments.

Murray Dinwoodie  
General Manager,  
Planning and Development

JR:saw

cc City Solicitor

Appendix I – Proposed Zoning By-law Amendments

Appendix II – Letter from BC & Yukon Hotels' Association dated April 3, 2002

Appendix III – Letter from BC Liquor Licensee and Retailers Association dated September 17, 2002

Appendix IV – Selected CD By-laws Based on the C-4, C-5 and C-L Zones

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## Appendix I

### Proposed Zoning By-law Amendments

**A.** It is recommended that the following amendments to Surrey Zoning By-law, 1993, No. 12000, as amended be approved:

2. In Part 1 Definitions delete the existing definition of "neighbourhood pub" and replace it with the following:

**"Neighbourhood Pub**

means a business licensed as "liquor primary" under the Regulations to the Liquor Control and Licensing Act, R.S.B.C. 1996, chapter 267, as amended."

3. Amend Part 28 Special Care Housing 1 Zone (RMS-1) as follows:

- Delete Sub-section B.3.(d) and replace with the following:

"(d) *Eating establishment* provided that the seating capacity shall not exceed 35 and the said *eating establishment* is not licensed by the Liquor Control and Licensing Act, R.S.B.C. 1996, chapter 267, as amended; and"

4. Amend Part 29 Special Care Housing 2 Zone (RMS-2) as follows:

- Delete Sub-section B.3.(d) and replace with the following:

"(d) *Eating establishment* provided that the seating capacity shall not exceed 35 and the said *eating establishment* is not licensed by the Liquor Control and Licensing Act, R.S.B.C. 1996, chapter 267, as amended; and"

5. Amend Part 34 Local Commercial Zone (C-4) as follows:

- Delete Sub-section B.1.(b) and replace with the following:

"(b) *Eating establishment* excluding the following:

*i. Drive-through restaurant; and*

*i. Eating establishment* licensed by the Liquor Control and Licensing Act, R.S.B.C. 1996, chapter 267, as amended; and"



## 2. Amend Part 48 Light Impact Industrial Zone (IL) as follows:

- Amend Sub-section B.10.(a) deleting "Liquor Control and Licensing Act R.S.B.C." and replacing this with "Liquor Control and Licensing Act, R.S.B.C. 1996, chapter 267, as amended"

A. It is recommended that the following amendment to Surrey Zoning By-law, 1979, No. 5942, as amended be approved:

## 1. In Part XXXVIII C-L Local Commercial Zone, amend section B.1 as follows:

- Delete "Restaurants, Cafes and Delicatessens" and replace with "Restaurants, cafés and delicatessens, provided that the said businesses are not licensed by the Liquor Control and Licensing Act, R.S.B.C. 1996, chapter 267, as amended"

## Appendix IV

## Selected CD By-laws Based on the C-4, C-5 and C-L Zones

	CD BY-LAW NO.	STATUS	EATING EST. PERMITTED	NEIGH. PUB PERMITTED	CIVIC ADDRESS(ES)	OCB DESIGNATION
1.	12740	Approved 2/13/1996	Yes	No	(9886 - 120 Street); (Units 1, 2, 3 & 4 of 9880 - 120 Street); (Units 102, 101 & 201 of 9868 - 120 Street); (12028 - 99 Avenue)	Urban
2.	13087	Approved 11/15/1999	Yes	No	3531 King George Highway	Urban
3.	13102	Approved 7/28/1998	Yes	No	10835 - 160 Street; 15970 - 108A Avenue	Urban
4.	13310	Approved 4/27/1998	Yes	No	10422 - 168 Street	Urban
5.	14533	Approved 12/03/2001	Yes	No	(13674 Grosvenor Road)	Urban
6.	8463	Approved 2/17/1986	Yes	No	17619 - 96 Avenue	Suburban
7.	8593	Approved 7/28/1986	Yes	No	790 - 176 Street; 17624 - 8 Avenue	Agricultural
8.	7292 (amended by 9529)	Approved 1/09/1989	Yes	No	12818 - 72 Avenue	Urban
9.	10580	Approved 6/17/1991	Yes	No	8270 - 144 Street	Suburban

