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## MEMORANDUM

April 24, 2006

TO: Mayor & Council

CC: Judy Rogers, City Manager  
Syd Baxter, City Clerk  
Jacquie Forbes-Roberts, General Manager Community Services Group

FROM: Paul Teichroeb, Chief License Inspector

SUBJECT: Hours of Liquor Service Policy & By-law Implementation (RTS #4700)

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### PURPOSE

On April 6, 2006 Council and staff heard from some industry representatives concerning the implementation of the Hours of Liquor Service policy for the city's liquor establishments (excluding restaurants) into by-law form through an amendment to the Business Premises Regulation of Hours By-law. After hearing all delegations, debate and decision was deferred to the May 2, 2006 Council meeting.

Council, also, directed staff to meet with the liquor industry to discuss industry concerns regarding the by-law provisions for the standard & extended hours, enforcement procedures, licensing fees and the proposed amendments to the Noise Control By-law.

This memorandum provides information about the meeting with industry and provides some clarification for two other issues that were raised in the meeting:

1. the affect of by-law enactment on liquor establishments; and
2. the balance between resident interests versus industry interests.

### MEETING WITH INDUSTRY

On April 12, 2006 staff met with 28 representatives (4 organizations had multiple representatives) of the industry, who operate 28 liquor primary licenses (6 participants hold 2 or more liquor licenses), at a meeting coordinated by the BarWatch Association. Through approximately 2 hours of discussion most of the industry's concerns were resolved.

#### *Resolved Issues:*

1. There is general acceptance of the \$12/seat annual fee for the Extended Hours Liquor Establishment Class of business license.
2. Industry felt a high level of anxiety regarding an expanded role of monitoring and enforcement of liquor establishments by Licenses & Inspections staff. As a result, the industry was proposing a 'schedule of penalties' similar to that used by the Liquor Control and Licensing Branch. Staff indicated that the city would not consider

implementing such a system as it is not necessary and would fetter the city's enforcement discretion. There is a higher comfort level with the city's standard enforcement process and the appeal process for staff decisions regarding action against a business license.

3. Industry asked that staff consult with the Acoustic Engineer industry when considering revised wording for the Noise Control By-law amendments (refer to Appendix A attached to this memo for the suggested revised wording).

Staff agreed and are in discussion with the Acoustic Engineer industry. Staff recommend that Council move to add the following amendment to Recommendation C of the hours of liquor service report:

AND FURTHER THAT Council replace the wording in Appendix B with the wording provided in Appendix A of the memo from the Chief License Inspector dated April 24, 2006 entitled "Hours of Liquor Service Policy & By-law Implementation (RTS #4700)".

Staff acknowledge the acoustic engineer industry concern regarding the requirement for an acoustic report to verify compliance with the Noise Control By-law. Staff assured the industry that care and due diligence will be given to the unique site characteristics of each establishment. Also, staff fully expect the acoustic engineer consultants to be pragmatic in their assessment of each establishment including the appropriate proviso's that the onus for compliance lies with the operator and the operational limits that they recommend. Vancouver Coastal Health Authority staff will prepare a guide or explanatory bulletin for the preparation of these acoustic reports which will address the specific issues raised by the consultants.

*Unresolved Issues:*

1. Hours of Operation Equity

The industry meeting participant's position is that all liquor establishments in Map 2 (Downtown - Primarily Mixed Use Area) should have Standard Hours of operation equal to 11:00 a.m. to 2:00 a.m., 7 days per week and Extended Hours of operation of 9:00 a.m. to 3:00 a.m., 7 days per week. These are the same hours allowed in the Downtown Business Core and Entertainment District.

Staff recommend that Council NOT support the industry recommendation as indicated above for the following reasons:

- a. The later hours are not appropriate for the downtown residential areas. The current policy is a reasonable balance between divergent stakeholders - this balance permitted weekend closing hours beyond what currently or previously existed in areas with a residential component in lieu of a status quo or reduction of the weekday closing hours and the ability to roll those hours back further should issues arise that negatively impact the community. Residents accepted later weekend hours provided their need for more reasonable weekday closing hours was acknowledged.
- b. Operators will be able to apply directly to the LCLB to amend their liquor license to reflect the new hours without requiring public consultation for each

application. Residential communities will not have an opportunity to respond to changes in hours of operation for individual establishments.

## 2. Fee Equity:

Related to the above issue of identical hours of liquor service, is the contention that if an establishment cannot have the identical hours of liquor service then that establishment should not be required to pay the same business license fee.

The extended hours permitted in each area of the city, except for the Downtown Eastside, equals 21 extra hours of liquor service (1 hour later per day at closing time and 2 hours earlier per day at opening time). Therefore the business license fees for the Extended Hours Liquor Establishments buys 21 extra hours of liquor service, regardless of where they are located in the city. Staff anticipate that the policy review for the Downtown Eastside will include some level of extended hours. Staff do agree that the permitted extended hour times are not the same for every establishment, as the times for each area was based on different criteria (i.e. balancing the resident versus industry interests).

## DISCUSSION

### 1. Anticipated Result of By-Law Enactment

The current policy, if all licensees took advantage of the extended hours in their respective areas, creates a net gain in hours of operation (opening or closing hours) for 236 of 241 establishments in the city or approximately 98% (5 establishments located in the downtown eastside receive no gain) - refer to Appendix B for other statistical analysis. However, the hours gained by an establishment may not be the hours they feel will keep or increase their competitive advantage over establishments in other areas targeting the same client demographic.

Only 26 of 232 establishments (11.2%) will have a net reduction in closing hours after allowing for the extended hours of operation (16 of these establishments have been the subject of noise complaints, other operational issues within the past 9 years or are the subject of relocation discussions; 2 are theatres that can only serve alcohol in conjunction with a performance). None of these establishments were represented at the industry organized consultation meeting.

### 2. Balancing the Resident versus Industry Interests

The policy and by-law, as proposed, is a balance between a variety of divergent stakeholders the most prominent being the industry and area residents. The hours proposed, respect as best as possible, the make-up of the different areas of the city. The standard hours for each area represent the base or minimum hours of operation that were deemed suitable for an area knowing that:

- even well run liquor establishments generate negative issues and impacts for a community;
- the hours could not be rolled back by the city; and
- enforcement action is limited to by-law charges (when applicable), business license suspension or referral of the business license to Council for revocation.

It is the authority to roll back hours (i.e. suspend or revoke an Extended Hours Liquor Establishment class of business license) that has enabled staff and area residents to accept the possibility of longer hours of liquor service, particularly closing hours, in their community. In most cases, later weekend closing times beyond what were previously permitted on a permanent basis were accepted as a trade-off for having the potential to rollback weekday closing times should issues arise. Generally, in most cases the operators would continue in the status quo if they obtained the extended hours business license. Only the few businesses as noted above would face a net reduction in their hours of operation, but as noted above a majority of these businesses are establishments that have generated neighbourhood issues over the past number of years.

## CONCLUSION

Staff recommend that Council approve the reports recommendations with the two amendments (waiver of enforcement action in the Downtown Eastside presented at the April 6, 2006 Council meeting and the Noise Control By-law amendments as presented in Appendix A). Staff feel the policy and by-law is a reasonable balance between very divergent groups, that the majority of operators are benefiting from and happy with this policy and that only a small group of operators, whom still benefit from the policy, are concerned about the potential for reduced hours in the event they are found to be negatively impacting the community.



Paul Teichroeb  
Chief License Inspector

Phone: 604.873.7545  
Fax: 604.871.6394

PT/GG/cj



## APPENDIX A

### Part 1 - Suggested Replacement wording for Appendix B:

The following amendments are proposed to the Noise Control By-law:

Add the following definitions:

“extended hours” means the difference between the time at which any particular class of standard hours liquor establishment opens or closes for business in any particular area, and the time at which the same class of extended hours liquor establishment opens or closes for business in the same area.

“extended hours liquor establishment” has the meaning set out in the License By-law;

“standard hours liquor establishment” has the meaning set out in the License By-law;

Also add:

11D. In addition to the requirements of section 11, a person in an extended hours liquor establishment must not make, cause, or permit to be made or caused, during extended hours, continuous or non-continuous bass noise or bass sound of a radio, television, player or other sound playback device, public address system, or any other music or voice amplification equipment, musical instrument, whether recorded or live, whether amplified or not, the level of which exceeds:

- (a) 80 dBC (Leq) in respect of any extended hours liquor establishment located in any area outlined in black on Schedule F - Map 1 or Schedule F - Map 4; or
- (b) 75 dBC (Leq) in respect of any extended hours liquor establishment located in any area outlined in black on Schedule F - Map 2, Schedule F - Map 3, Schedule F - Map 5, Schedule F - Map 6, or Schedule F - Map 7;

when measured on an approved sound meter for a period of one minute at a distance of three metres from an exterior wall of the building in which that liquor establishment is situated, and at least 1.2 metres above the ground.

11E. In addition to the requirements of sections 11 and 11D, a person in an extended hours liquor establishment, as defined under the License By-law, must not make, cause, or permit to be made or caused, during extended hours, continuous or non-continuous sound of a radio, television, player or other sound playback device, public address system, or any other music or voice amplification equipment, musical instrument, whether recorded or live, whether amplified or not, the level of which exceeds 3 decibels (Leq) dBA above the background noise on an approved sound meter when measured for a period of one minute at a distance of, three metres from an exterior wall of the building in which that liquor establishment is situated, and at least 1.2 metres above the ground.

Any consequential amendments to add definitions or re-number sections.

## APPENDIX B

**Extended Hours of Liquor Service Policy**  
**Total Number of Licences = 241 (10 establishments with no information)**

### Results of Complete Policy (opening & closing changes)

	Number of establishments	Percentage
Number of establishments that gain from policy (either opening or closing)	236	97.9%
Number of establishments that have a net reduction (do not gain hours)	5 (from Map 7 - DEOD)	2.07%

### Results of Policy on Opening Times

		Number of establishments	Percentage
Standard Hours	Gain	95	39.4%
	No change	98	40.66%
	Net reduction	48	19.9%
Extended Hours [only 232 establishments participating - 9 (DEOD) are not eligible]	Gain	228	98.27%
	No change	4	(1.7%)
	Net reduction	0	-

### Results of Policy on Closing Times

		Number of establishments	Percentage
Standard Hours	Gain	105	43.6%
	No change	12	4.97%
	Net reduction	124	51.45%
Extended Hours (only 232 establishments participating - 9 are not eligible)	Gain	206	88.8%
	No change	0	-
	Net reduction	26	11.2%