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Subject: Memo - Liquor Licensing: Overview of Regulations, Roles and Policies

Attachments: Memo to Council - Liquor Licensing Overview - May 22 2020.pdf

Good afternoon Mayor and Council,

On Monday afternoon, we have scheduled a briefing for you on the City's role in regulating alcohol sale and consumption and the associated policy issues. As a supplement to that briefing, the attached memo outlines the current regulatory framework in BC, the role of local government within that framework and the comprehensive review of City of Vancouver liquor policies completed in 2017.

I hope this information is helpful. We are happy to address any questions you may have at the briefing on Monday or thereafter.

Best,
Paul

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The City of Vancouver acknowledges that it is situated on the unceded traditional territories of the Musqueam, Squamish, and Tsleil-Waututh peoples.

MEMORANDUM

May 22, 2020

TO: Mayor and Council

CC: Sadhu Johnston, City Manager
Karen Levitt, Deputy City Manager
Lynda Graves, Administration Services Manager, City Manager's Office
Rena Kendall-Craden, Civic Engagement and Communications Director
Rosemary Hagiwara, Acting City Clerk
Anita Zaenker, Chief of Staff, Mayor's Office
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Lon LaClaire, General Manager, Engineering
Jessie Adcock, General Manager, Development, Buildings and Licensing
Iain Dixon, Assistant Director, Legal Services
Kathryn Holm, Chief Licence Inspector

FROM: Paul Mochrie
Deputy City Manager

SUBJECT: Liquor Licensing: Overview of Regulations, Roles and Policies

This memo is intended to provide information on the roles of liquor licensing by the Province and the City, and a high level summary of the City's recent Liquor Policy review. The information in this memo reflects the changes in regulations announced on May 22, 2020 by the Provincial Liquor and Cannabis Regulation Branch (LCRB) in response to COVID-19.

JURISDICTION

Provincial

The production, consumption and sale of liquor in BC are governed by the provincial *Liquor Control and Licencing Act* (the "Act").

The *Act* restricts the consumption of liquor to private homes and licensed spaces. This is enforced through penalties under the *Act* and the public intoxication section of the *Offence Act*.

The LCRB issues liquor licences in BC to establishments to serve manufacture and/or sell liquor in the Province. The LCRB alone is responsible for deciding whether an operator will receive a licence, however in many circumstances it takes local government comments into consideration. The LCRB is also responsible for supervision of liquor service in licensed establishments.

Liquor Serving Establishments

Liquor service may only occur within a licensed establishment's designated and provincially approved floor plan. Floor plans establishing the service area and occupancy are approved by the LCRB during the initial liquor licence approval, and are called "red line areas". This red line area is the only area in which alcohol can be consumed. In order to modify the liquor service red line area either permanently or temporarily, a licence holder must obtain both provincial and municipal approval.

There are three main types of liquor licences issued by the Province.

- Liquor Primary (LP): a location that serves liquor as the principal focus of their business. These locations may also provide food but are not full kitchen service. A reasonable variety of hot or cold snacks and non-alcoholic beverages must be available. Bars, pubs, and night clubs are common examples of establishments needing liquor primary licences.
- Food Primary (FP): a location where the principal focus is the service of food such as restaurants. Take-out restaurants, mall food fairs, food trucks, and banquet halls without fully equipped kitchens are not eligible to obtain a provincial FP licence.
- Manufacturer: a location that manufactures liquor for consumption, including wineries, breweries and distilleries. These locations may be issued provincial approval (called lounge endorsements) for the sale and consumption of their product on site. Under the provincial lounge endorsement, food service is required.

New Liquor Primary licences, permanent amendments to Liquor Primary licences, Food Primary licences that include patron participation (Dancing and Karaoke), and manufacturing lounges are a few of the applications that require, per the LCRB, public consultation which takes in consideration the impact of the application on the community.

On May 22, 2020 the Province announced temporary changes to support licensed establishments in re-opening during the COVID-19 pandemic, including:

- Temporary expansions of liquor service areas (red lines) for all licence types (FP, LP and Manufacturers) to October 31, 2020, with no increase in overall occupancy
- Standard provincial fees for temporary service area changes are waived
- Licensees will still be subject to any PHO orders requiring reduced occupancy loads
- Requests must comply with local government by-laws and health and fire regulations
- Local governments will have two options: 1) to provide one pre-approval to cover all liquor primary and manufacturer establishments within their jurisdiction who may apply

for an expanded service area, or 2) to review and approve all individual requests for liquor primary and manufacturer expansions prior to licensees submitting their applications to the LCRB

- FP expansion requests will self-declare during the LCRB application process that they are compliant with local government by-laws and regulations. The City will be notified when an expanded FP service area is approved by LCRB.
- No site inspections will be required for approval but compliance checks will be conducted by the Province

Municipal

Municipalities have no independent jurisdiction with respect to liquor and, in particular, the *Vancouver Charter* does not give the City any jurisdiction over liquor consumption or sales. The role that the City plays in the sale and consumption of alcohol is set out in the *Liquor Control and Licensing Act*. (See Appendix A)

a. Licensed Premises

The *Act* does provide for a significant municipal role in relation to liquor service establishments. Municipalities set local by-laws and policies to guide the community impacts and operations of liquor-related businesses, and regulations to guide zoning and street use requirements. Examples of the types of regulations include:

- *Council approved Liquor Policy* – enable and support liquor business operations while ensuring health, safety and community liveability
- *License By-law 4450* – establishes licence categories to align with Provincial liquor licensing categories and establish specific operating requirement for Liquor Establishments and Restaurants (i.e. hours of operation, noise restrictions, Good Neighbour Agreements)
- *Zoning and Development By-law 3575* – establishes districts in which business may operate.

When assessing applications for liquor service establishments, municipalities must consider the impact the establishment may have on the community (parking, noise, traffic), and whether the application fits within established policy and by-laws related to size and proximity to other liquor-related businesses. The City provides input on LP licence applications to the LCLB. The City's two existing moratoria (DTES and GED) apply only to LP licences.

City staff are currently evaluating the May 22 provincial changes to expedite temporary expansions to liquor service areas, and will develop ways to expedite the municipal processes.

Limited Service Food Establishments (Ltd Food) are a class of City business licence for retail based businesses that prepare and serve fresh food and have 16 seats or less. Ltd Food is not

considered a restaurant; rather they are considered retail businesses through the Zoning and Development By-law. This category of licence was created in order to enable smaller food based businesses to serve food while not having to meet the stringent building code requirements for restaurants. The service of alcohol at these establishments is prohibited through the License By-law as they are considered retail and not restaurants.

Provincial regulation says that a location must have a fully equipped kitchen in order to apply for a Food Primary liquor licence. In order for a location currently licensed as Ltd Food to apply for a Food Primary liquor licence, the location would have to meet this provincial requirement, and convert from their current retail use to a restaurant. This change would require that the location meet Zoning requirements and Building By-law requirements for restaurants, typically requiring upgrades to the building and fire safety systems.

b. Public Consumption

The *Act* prohibits liquor consumption in public spaces. However, under Section 73 (2) municipalities are authorized to pass a by-law to allow liquor consumption in designated public spaces.

A by-law enacted pursuant to Section 73(2) must define precisely the areas in which liquor consumption is allowed and the hours during which that consumption may occur. There is no ability for Council to delegate the designation of either the hours of consumption or the location to staff.

These designated areas must remain public and there cannot be restrictions on access based on whether a person has purchased items from a nearby licensed establishment. Further, there cannot be any sales or service in these areas. These areas could only be used as areas of consumption, in which citizens can bring their previously purchased liquor to consume. See Appendix A for Section 73 of the *Act*.

c. Park Board

We will provide Council with a separate memo to address the Park Board jurisdiction over alcohol consumption in parks.

CITY OF VANCOUVER LIQUOR POLICY

A city-wide liquor policy review culminated in June 2017 with a staff report to Council. Through staff's work with key stakeholders including Vancouver Coastal Health, Vancouver Police Department, Tourism Vancouver, and industry representatives, the policy review aimed to assess the existing by-laws, policies and guidelines to reflect evolving needs and issues, and to

align City liquor policy with recent changes to Provincial liquor policies. The liquor policy review set out to advance three goals:

- 1) Protect health, safety and community liveability;
- 2) Foster creativity, community connection and local economy; and
- 3) To ensure an effective and efficient regulatory framework.

Council approved recommendations on June 14, 2017 ([Liquor Policy Review – Recommended Actions](#)) and a subsequent liquor policy update on May 2, 2018 ([Update on Liquor Policy Implementation and Upgrading the Granville Entertainment District](#)) enabling staff to implement 38 liquor related policies and actions to support the goals.

Many of the liquor policy changes were made to align with the revised provincial regulations. For example, in January 2017 Provincial regulations enabled any business, except those that operate out of a motor vehicle or whose business is predominantly aimed at minors, to sell and serve alcohol. The business must apply to the Province for a liquor primary licence; terms of the licence state that liquor service is ancillary to the primary business.

In response to that change, on June 14, 2017 Council approved the staff recommendation to support Provincial liquor primary applications from arts and culture businesses. In addition to amending the License By-law, policy was created to specify that applications will be supported from retail art dealers and galleries and from community associations with arts and culture as their core mandate. Despite inquiries from the industry, there have been no formal applications or licences issued to date.

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APPENDIX A – Liquor Control and Licensing Act

Licences, Authorizations and Permits

Division 5 — Local Government and First Nations

Recommendations of local government or first nation on issue and amendment of licence

Section 38 (1) Subject to subsection (2), a licence of a prescribed class of licences must not be issued or amended unless, in the prescribed circumstances, the applicant has given the local government or first nation for the area in which the establishment is proposed to be located or is located notice of the application in accordance with the regulations.

(2) A local government or first nation may indicate in writing to the general manager that it does not wish to receive notice under subsection (1) of applications or a class of applications.

(3) A local government or first nation that receives notice under subsection (1) must, if it wishes to provide comments and recommendations under this section with respect to the application,

(a) take into account the prescribed criteria before providing the comments and recommendations,

(b) provide the comments and recommendations to the general manager

(i) in accordance with the regulations, and

(ii) within the prescribed time period, or any further period authorized by the general manager, and

(c) in the prescribed circumstances, gather the views of residents of an area determined by the local government or first nation in respect of the application by

(i) receiving written comments in response to a public notice of the application,

(ii) conducting a public hearing in respect of the application,

(iii) holding a referendum, or

(iv) using another method the local government or first nation considers appropriate.

(4) Subject to section 39, if the local government or first nation recommends that the licence not be issued or amended, the general manager must not issue or amend the licence.

(5) Subject to section 39, if the local government or first nation recommends that the licence be issued or amended, the general manager must take that recommendation into account in deciding whether or not to issue or amend the licence.

Imposition of fees by local government

Section 41 (1) A local government that provides comments and recommendations on an application for the issue or amendment of a licence under this Act may, by bylaw, impose fees on the applicant in order to recover the costs incurred by the local government in assessing the application.

(2) Fees imposed under subsection (1) may be different for

(a) different classes of applications, and

(b) different methods used to conduct the assessment referred to in that subsection.

Possession and Consumption of Liquor

Unlawful possession or consumption of liquor

Section 73 (1) A person must not consume liquor, or possess liquor in an open container, in a place other than

- (a) a residence,
- (b) a private place,
- (c) a service area in respect of which a licence, authorization or permit allows consumption,
- (d) as provided under section 11,
- (e) as provided under subsections (2) to (4) of this section,
- (f) an assisted living residence, community care facility, hospital or other prescribed facility as provided in section 9, or
- (g) in a liquor store as allowed under the [*Liquor Distribution Act*](#).

(2) Subject to subsection (3) and the regulations, a public place, or part of it, may be designated, by a bylaw of the municipality or regional district that has jurisdiction over the public place, as a place where liquor may be consumed.

(3) A bylaw under subsection (2) must contain the hours during which liquor may be consumed.

(4) Without limiting subsection (2), regulations under that subsection may provide that a bylaw referred to in that subsection may not designate

- (a) a specified public place, or
- (b) a specified public place for a specified period of time.