



SPECIAL RECONSIDERATION HEARING A G E N D A

Monday, June 8, 2020, 3:00 p.m.

Council Chamber, City Hall

4949 Canada Way, Burnaby, BC

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MICHAEL GOLDEN

Law Corporation

208 – 4250 Kingsway
Burnaby, British Columbia
Canada, V5H 4T7

Tel: (604) 439-2420

Fax: (604) 435-2059

email:

info@michaelgoldenlawyer.com

April 2, 2020

Our File No.: 00893

By Email: clerks@burnaby.ca

City of Burnaby Clerk's Office
4949 Canada Way
Burnaby, BC
V5G 1M2

Attention: City Clerk

Dear Sir/Madam:

Re: By Law File No.: BYL20-00205

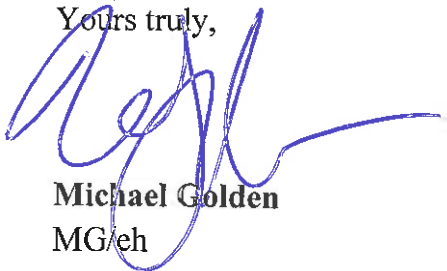
Dahlak Restaurant Ltd. Operating at 7868 Edmonds Street, Burnaby, BC

We are counsel for Dahlak Restaurant Ltd. and have been instructed to write to you regarding the cancellation of the business licence for 7868 Edmonds Street dated March 30, 2020.

Please consider this letter a request for a reconsideration pursuant to Section 8.1 of the *Burnaby Business Licence Bylaw*. My client requests that you refer this matter to Council to reconsider the decision to cancel our client's business licence.

It is unlikely that there will be anyone at the premises at 7868 Edmonds Street because the business cannot operate. Please forward any correspondence related to this matter to our office.

Yours truly,



Michael Golden

MG/eh



Item
Meeting.....2020 June 08

Council REPORT

TO: CITY MANAGER **DATE:** 2020 May 11

FROM: CHIEF LICENCE INSPECTOR

SUBJECT: DAHLAK RESTAURANT LTD. LOCATED AT 7868 EDMONDS STREET BURNABY

PURPOSE: To provide Council with information on the cancellation of the Burnaby Business Licence issued to Dahlak Restaurant Ltd.

RECOMMENDATION:

1. **THAT** Council uphold the Chief Licence Inspector's decision to cancel the business licence for Dahlak Restaurant Ltd. to operate at 7868 Edmonds Street.

REPORT

1.0 BACKGROUND

Dahlak Restaurant Ltd. (Dahlak Restaurant) applied for a Burnaby business licence on 2019 January 29, to operate as a restaurant at 7868 Edmonds Street. The licence (BUS19-00344) was issued on 2019 August 2 and subsequently renewed for 2020. Under the business licence, the restaurant is permitted to have a maximum seating capacity of 50.

As a result of the COVID-19 pandemic, on 2020 March 20, the Provincial Health Officer, Dr. Bonnie Henry, issued a Public Health Order under the *Public Health Act* placing restrictions on all restaurants operating within the province (**Attachment # 1**). The Public Health Order states in part that:

Owners and operators of places at which food and/or drink are prepared and served may stay open, subject to the following:

- Only take out or delivery service are provided;
- Customers may be on the premises only for the time that it takes them to purchase and collect their purchase.
- Owners and operators must ensure that when there are people on the premises, there is sufficient space available to enable them to maintain a distance of 2 meters from one another.
- No more than 50 people may be on the premises at any given time.

To: City Manager
 From: Chief Licence Inspector
 Re: Cancellation of Burnaby Business Licence to Dahlak Restaurant Ltd.
 2020 May 11.....Page 2

Section 11.8 of the *Burnaby Business Licence Bylaw 2017* requires that “every holder of a business licence shall comply at all times with every City bylaw or enactment of the Province or Canada or other governmental authority in respect to the business and the business premises named in the business licence”. This section requires Dahlak Restaurant to comply with the above Public Health Order.

2.0 POLICY SECTION

The recommended action is aligned with the City of Burnaby’s Corporate Strategic Plan by supporting the following goals and sub-goals of the plan:

A Safe Community

- Emergency preparedness

A Healthy Community

- Healthy life
- Healthy environment

3.0 NON-COMPLIANCE BY DAHLAK RESTAURANT LTD.

On Wednesday 2020 March 25, the Burnaby Licence Office received a complaint from the public that alleged Dahlak Restaurant was continuing to operate in contravention of the Public Health Order. The complainant claimed the business was hosting gatherings on site and conducting business in contravention of the Public Health Order.

On Thursday 2020 March 26 staff from the Licence Office contacted the owner of Dahlak Restaurant Ltd., Mr. Amanuel Mahrteb Kidan, by telephone and advised him that a complaint had been received in regards to alleged contraventions of the Public Health Order. During the conversation, Mr. Kidan was cautioned against violating the Public Health Order and advised of the requirement for restaurants to adhere to the Public Health Order. Mr. Kidan was further warned that periodic City inspections would be conducted to ensure ongoing compliance. Following the telephone conversation an email was sent to the business owner summarizing the issues discussed (**Attachment # 2**).

On Monday 2020 March 30, Licence Office staff received notification from the RCMP that they attended the business location on Saturday March 28 at approximately 16:15 hours after receiving a complaint from the public claiming that large groups of people had been seen gathered inside the restaurant for two consecutive days.

The RCMP advised when they initially attended the restaurant that it appeared to be closed. The “Open” sign was turned off and the front door was found to be locked. One of the attending officers was able to look inside and saw multiple individuals. When the officer identified himself as a police officer and requested that the door be opened, the individuals inside (estimated to be 20-25 persons) ran out the back door into the alley.

To: City Manager
 From: Chief Licence Inspector
 Re: Cancellation of Burnaby Business Licence to Dahlak Restaurant Ltd.
 2020 May 11.....Page 3

The police further reported that when they subsequently gained entry, they found food and beverages being prepared and consumed on site, evidence of a card game taking place and seating arranged such that “individuals sitting would be shoulder to shoulder”, contrary to the Public Health Order that sufficient space be available to enable people in a restaurant premises to maintain a distance of 2 meters from each other. The owner, Mr. Amanuel Mhirteb Kidan was also onsite and was informed by the RCMP that they would be reporting what had been observed to the appropriate agencies and that fines and or a closure order could be issued as a result. The RCMP have provided a report outlining their observations of March 28 (**Attachment # 6**).

Shortly after receiving the information from the RCMP, Licence Office staff contacted Fraser Health Authority (FHA) staff by telephone to discuss the situation. During that conversation FHA staff advised that an FHA closure order would be issued to Dahlak Restaurant Ltd. that day, 2020 March 30, as a result of the activity observed by the RCMP (**Attachment # 3**).

Following consultation with the FHA and in connection with the closure order issued by the FHA, it was decided that the Burnaby business licence for Dahlak Restaurant Ltd., would be cancelled immediately for contravention of section 11.8 of the Burnaby Business Bylaw, despite the previous warning. In addition, a Bylaw Violation Notice (BVN) was also issued (**Attachment # 4**). Staff then contacted the business owner by phone to advise him of the pending action. A letter outlining the action taken against the business licence was provided to the business owner on 2020 March 30 as well (**Attachment # 5**).

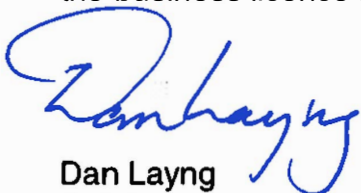
The Bylaw Violation Notice (L201089) was paid on 2020 April 17.

The decision to cancel the business licence was based on the foregoing. The Chief Licence Inspector believes that reasonable cause exists to cancel the business licence.

On 2020 April 2, the City Clerk’s Office received a request from Dahlak Restaurant’s legal counsel for reconsideration of the Chief Licence Inspector’s decision (**Attachment # 7**).

4.0 RECOMMENDATION

It is recommended that Council uphold the Chief Licence Inspector’s decision to cancel the business licence issued to Dahlak Restaurant Ltd.



Dan Layng
 Chief Licence Inspector

To: City Manager
 From: Chief Licence Inspector
 Re: Cancellation of Burnaby Business Licence to Dahlak Restaurant Ltd.
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Attachment 1: Public Health Order
 Attachment 2: Email to Business Owner
 Attachment 3: Fraser Health Closure order
 Attachment 4: Bylaw Violation Order
 Attachment 5: Letter to Business Owner
 Attachment 6: RCMP Report
 Attachment 7: Reconsideration Request (Michael Golden Law Corporation)

Copied to: City Manager
 Director Public Safety and Community Services
 Director Corporate Services
 Director Engineering
 City Clerk
 City Solicitor
 Officer in Charge., R.C.M.P. Burnaby Detachment
 Manager Health Protection, Fraser Health (attn. Gordon Stewart)
 Liquor & Cannabis Regulation Branch (attn. McKenzie Castle)



ORDER OF THE PROVINCIAL HEALTH OFFICER
(Pursuant to Sections 30, 31, 32, 39 (3) and 67 *Public Health Act*, S.B.C. 2008)

The *Public Health Act* is at:

<http://www.bclaws.ca/civix/content/complete/statreg/08028/?xsl=/templates/browse.xsl> (excerpts enclosed)

- TO: OWNERS AND OPERATORS OF PREMISES AT WHICH FOOD AND/OR DRINK IS PREPARED AND SERVED**
- TO: HOLDERS OF LIQUOR LICENCES AND LIQUOR LICENCE ENDORSEMENTS THAT DO NOT OFFER MEAL SERVICE AT THEIR PREMISES**
- TO: OWNERS AND OPERATORS OF PREMISES AT WHICH MEALS AND DRINKS, INCLUDING DRINKS CONTAINING LIQUOR ARE PREPARED AND SERVED**
- TO: OWNERS AND OPERATORS OF RETAIL LIQUOR ESTABLISHMENTS**

WHEREAS:

- A. A communicable disease known as COVID-19 has emerged in British Columbia.
- B. SARS-CoV-2, an infectious agent, can cause outbreaks of serious illness known as COVID-19 among the public;
- C. A person infected with SARS-CoV-2 can infect other people with whom the infected person is in contact;
- D. The gathering of people in close contact with one another can promote the transmission of SARS-CoV-2 and increase the number of people who develop COVID-19;
- E. You belong to one of the classes of persons to whom this notice is addressed;
- F. I have reason to believe and do believe that
 - (i) the risk of an outbreak of COVID-19 among the public constitutes a health hazard under the *Public Health Act*;
 - (ii) because the risk of an outbreak extends beyond the authority of one or more medical health officers and coordinated action is needed to protect the public from contracting COVID-19, it is in the public interest for me to exercise the powers in sections 30, 31, 32 and 39(3) of the *Public Health Act* **TO ORDER** as follows:

THIS ORDER SUPERSEDES MY ORAL ORDER DIRECTED AT LIQUOR LICENCE HOLDERS AND FOOD SERVICE OPERATORS MADE ON MARCH 17, 2020 AND CONFIRMS MY ORAL ORDER MADE ON MARCH 20, 2020

OWNERS AND OPERATORS OF PLACES AT WHICH FOOD AND/OR DRINK ARE PREPARED AND SERVED

1. You may stay open, subject to the following:
 - a. You may only provide take out or delivery service.
 - b. Customers may be on your premises only for the time that it takes them to purchase and collect their purchase.
 - c. You must ensure that when there are people on your premises there is sufficient space available to enable them to maintain a distance of 2 metres from one another.
 - d. You must not have more than 50 people present at one time on your premises.

HOLDERS OF LIQUOR LICENCES AND LIQUOR LICENCE ENDORSEMENTS THAT DO NOT OFFER MEAL SERVICE AT THEIR PREMISES

1. If you are the holder of a Liquor Primary Licence and only provide snacks or appetizers but not meal service, such as a nightclub, you must close.
2. If you are the holder of a manufacturer onsite lounge endorsement or a manufacturer onsite tasting room endorsement you must close those endorsement areas.

OWNERS AND OPERATORS OF PLACES AT WHICH MEALS AND DRINKS, INCLUDING DRINKS CONTAINING LIQUOR, ARE PREPARED AND SERVICED

1. You may stay open, subject to the following:
 - a. You may only provide take out or delivery service.
 - b. Customers may be on your premises only for the time that it takes them to purchase and collect their purchases.
 - c. You must ensure that when there are people on your premises there is sufficient space available to enable them to maintain a distance of 2 metres from one another.
 - d. You must not have more than 50 people present at one time on your premises.

OWNERS AND OPERATORS OF RETAIL LIQUOR ESTABLISHMENTS

1. If you are the holder of a retail liquor store licence or a manufacturer's on-site store endorsement, or a liquor primary licence with an off-sales endorsement listed in Table 1, your retail premise may stay open.
2. You are subject to the above provisions which apply to the OWNERS AND OPERATORS OF PLACES AT WHICH MEALS AND DRINKS, INCLUDING DRINKS CONTAINING LIQUOR, are prepared and served.

Table 1 - Retail liquor sales permitted at premises whose operators hold one of these licences or endorsements

Licence
brewery licence with on-site store endorsement
winery licence with on-site store endorsement
distillery licence with on-site store endorsement
licensee retail store licence
wine store licence
special wine store licence
liquor primary licence with off-sales endorsement

You may contact me at:

Dr. Bonnie Henry, Provincial Health Officer
 4th Floor, 1515 Blanshard Street
 P O Box 9648 STN PROV GOVT, Victoria BC V8W 9P4
 Fax: (250) 952-1570

This Order expires on May 30, 2020 and is subject to revision, cancellation or extension by me.

You are required under section 42 of the *Public Health Act* to comply with this Order. Failure to comply with this Order is an offence under section 99 (1) (k) of the *Public Health Act*.

Under section 43 of the *Public Health Act*, you may request me to reconsider this Order if you:

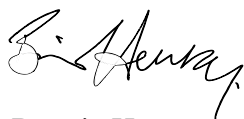
1. Have additional relevant information that was not reasonably available to me when this Order was issued,
2. Have a proposal that was not presented to me when this Order was issued but, if implemented, would
 - (a) meet the objective of the order, and
 - (b) be suitable as the basis of a written agreement under section 38 [may make written agreements]
3. Require more time to comply with the order.

Under section 43 (6) an order is not suspended during the period of reconsideration unless the health officer agrees, in writing, to suspend it.

If you fail to comply with this Order, I have the authority to take enforcement action against you under Part 4, Division 6 of the *Public Health Act*.

DATED THIS: 20 day of March 20, 2020

SIGNED:



Bonnie Henry
 MD, MPH, FRCPC
 Provincial Health Officer

DELIVERY BY: News release and posting on the BC Government website, posting on the BC Centre for Disease Control website and by email.

Enclosure: Excerpts of *Public Health Act*

ENCLOSURE**Excerpts of the *PUBLIC HEALTH ACT*****Public Health Act [SBC 2008] c. 28****Definitions**

1 In this Act:

"health hazard" means

- (a) a condition, a thing or an activity that
 - (i) endangers, or is likely to endanger, public health, or
 - (ii) interferes, or is likely to interfere, with the suppression of infectious agents or hazardous agents, or
- (b) a prescribed condition, thing or activity, including a prescribed condition, thing or activity that
 - (i) is associated with injury or illness, or
 - (ii) fails to meet a prescribed standard in relation to health, injury or illness;

When orders respecting health hazards and contraventions may be made

30 (1) A health officer may issue an order under this Division only if the health officer reasonably believes that

- (a) a health hazard exists,
- (b) a condition, a thing or an activity presents a significant risk of causing a health hazard,
- (c) a person has contravened a provision of the Act or a regulation made under it, or
- (d) a person has contravened a term or condition of a licence or permit held by the person under this Act.

(2) For greater certainty, subsection (1) (a) to (c) applies even if the person subject to the order is complying with all terms and conditions of a licence, a permit, an approval or another authorization issued under this or any other enactment.

General powers respecting health hazards and contraventions

31 (1) If the circumstances described in section 30 [*when orders respecting health hazards and contraventions may be made*] apply, a health officer may order a person to do anything that the health officer reasonably believes is necessary for any of the following purposes:

- (a) to determine whether a health hazard exists;

- (b) to prevent or stop a health hazard, or mitigate the harm or prevent further harm from a health hazard;
 - (c) to bring the person into compliance with the Act or a regulation made under it;
 - (d) to bring the person into compliance with a term or condition of a licence or permit held by that person under this Act.
- (2) A health officer may issue an order under subsection (1) to any of the following persons:
- (a) a person whose action or omission
 - (i) is causing or has caused a health hazard, or
 - (ii) is not in compliance with the Act or a regulation made under it, or a term or condition of the person's licence or permit;
 - (b) a person who has custody or control of a thing, or control of a condition, that
 - (i) is a health hazard or is causing or has caused a health hazard, or
 - (ii) is not in compliance with the Act or a regulation made under it, or a term or condition of the person's licence or permit;
 - (c) the owner or occupier of a place where
 - (i) a health hazard is located, or
 - (ii) an activity is occurring that is not in compliance with the Act or a regulation made under it, or a term or condition of the licence or permit of the person doing the activity.

Specific powers respecting health hazards and contraventions

- 32** (1) An order may be made under this section only
- (a) if the circumstances described in section 30 [*when orders respecting health hazards and contraventions may be made*] apply, and
 - (b) for the purposes set out in section 31 (1) [*general powers respecting health hazards and contraventions*].
- (2) Without limiting section 31, a health officer may order a person to do one or more of the following:
- (a) have a thing examined, disinfected, decontaminated, altered or destroyed, including
 - (i) by a specified person, or under the supervision or instructions of a specified person,
 - (ii) moving the thing to a specified place, and
 - (iii) taking samples of the thing, or permitting samples of the thing to be taken;
 - (b) in respect of a place,
 - (i) leave the place,
 - (ii) not enter the place,

- (iii) do specific work, including removing or altering things found in the place, and altering or locking the place to restrict or prevent entry to the place,
 - (iv) neither deal with a thing in or on the place nor dispose of a thing from the place, or deal with or dispose of the thing only in accordance with a specified procedure, and
 - (v) if the person has control of the place, assist in evacuating the place or examining persons found in the place, or taking preventive measures in respect of the place or persons found in the place;
 - (c) stop operating, or not operate, a thing;
 - (d) keep a thing in a specified place or in accordance with a specified procedure;
 - (e) prevent persons from accessing a thing;
 - (f) not dispose of, alter or destroy a thing, or dispose of, alter or destroy a thing only in accordance with a specified procedure;
 - (g) provide to the health officer or a specified person information, records, samples or other matters relevant to a thing's possible infection with an infectious agent or contamination with a hazardous agent, including information respecting persons who may have been exposed to an infectious agent or hazardous agent by the thing;
 - (h) wear a type of clothing or personal protective equipment, or change, remove or alter clothing or personal protective equipment, to protect the health and safety of persons;
 - (i) use a type of equipment or implement a process, or remove equipment or alter equipment or processes, to protect the health and safety of persons;
 - (j) provide evidence of complying with the order, including
 - (i) getting a certificate of compliance from a medical practitioner, nurse practitioner or specified person, and
 - (ii) providing to a health officer any relevant record;
 - (k) take a prescribed action.
- (3) If a health officer orders a thing to be destroyed, the health officer must give the person having custody or control of the thing reasonable time to request reconsideration and review of the order under sections 43 and 44 unless
- (a) the person consents in writing to the destruction of the thing, or
 - (b) Part 5 [*Emergency Powers*] applies.

May make written agreements

38 (1) If the health officer reasonably believes that it would be sufficient for the protection of public health and, if applicable, would bring a person into compliance with this Act or the regulations made under it, or a term or condition of a licence or permit held by the person under this Act, a health officer may do one or both of the following:

- (a) instead of making an order under Division 1, 3 or 4, enter into a written agreement with a person, under which the person agrees to do one or more things;
- (b) order a person to do one or more things that a person has agreed under paragraph (a) to do, regardless of whether those things could otherwise have been the subject of an order under Division 1, 3 or 4.

(2) If, under the terms of an agreement under subsection (1), a health officer conducts one or more inspections, the health officer may use information resulting from the inspection as the basis of an order under this Act, but must not use the information as the basis on which to

- (a) levy an administrative penalty under this Act, or
- (b) charge a person with an offence under this Act.

Contents of orders

39 (3) An order may be made in respect of a class of persons.

Duty to comply with orders

42 (1) A person named or described in an order made under this Part must comply with the order.

(2) Subsection (1) applies regardless of whether the person leaves the geographic area for which the health officer who made the order is designated.

Reconsideration of orders

43 (1) A person affected by an order, or the variance of an order, may request the health officer who issued the order or made the variance to reconsider the order or variance if the person

- (a) has additional relevant information that was not reasonably available to the health officer when the order was issued or varied,
- (b) has a proposal that was not presented to the health officer when the order was issued or varied but, if implemented, would
 - (i) meet the objective of the order, and
 - (ii) be suitable as the basis of a written agreement under section 38 [*may make written agreements*], or
- (c) requires more time to comply with the order.

(2) A request for reconsideration must be made in the form required by the health officer.

(3) After considering a request for reconsideration, a health officer may do one or more of the following:

(a) reject the request on the basis that the information submitted in support of the request

(i) is not relevant, or

(ii) was reasonably available at the time the order was issued;

(b) delay the date the order is to take effect or suspend the order, if satisfied that doing so would not be detrimental to public health;

(c) confirm, rescind or vary the order.

(4) A health officer must provide written reasons for a decision to reject the request under subsection (3) (a) or to confirm or vary the order under subsection (3) (c).

(5) Following a decision made under subsection (3) (a) or (c), no further request for reconsideration may be made.

(6) An order is not suspended during the period of reconsideration unless the health officer agrees, in writing, to suspend it.

(7) For the purposes of this section,

(a) if an order is made that affects a class of persons, a request for reconsideration may be made by one person on behalf of the class, and

(b) if multiple orders are made that affect a class of persons, or address related matters or issues, a health officer may reconsider the orders separately or together.

(8) If a health officer is unable or unavailable to reconsider an order he or she made, a similarly designated health officer may act under this section in respect of the order as if the similarly designated health officer were reconsidering an order that he or she made.

99 (1) A person who contravenes any of the following provisions commits an offence:

...

(k) section 42 [*failure to comply with an order of a health officer*], except in respect of an order made under section 29 (2) (e) to (g) [*orders respecting examinations, diagnostic examinations or preventive measures*];

From: [Dhaliwal, Andy](#)
To: aman_mihretab2000@yahoo.com
Subject: Dahlak Restaurant Ltd - Public Complaint - Breach of Public Health Order & Business Licence Bylaw - City of Burnaby
Date: Thursday, March 26, 2020 2:32:00 PM
Attachments: [covid-19-pho-order-nightclubs-food-drink-services.pdf](#)

Hi Aman,

Please be advised that the City of Burnaby has received a public complaint, that Dahlak Restaurant Ltd operating at 7868 Edmonds Street is having parties and conducting business in breach of the Public Health Order issued by the Public Health Officer. (Please see attached "*Covid-19-pho-order-nightclubs-food-drink-services*" for the Public Health Order regarding your business).

The City of Burnaby will be working with the Fraser Health Authority to ensure that businesses are complying with the Public Health Order as well as the Burnaby Business Licence Bylaw Section 11.8 which states the following:

"Every holder of a business licence shall comply at all times with every City bylaw or enactment of the Province or Canada or other governmental authority in respect to the business and the business premises named in the business licence."

Please be advised that the City of Burnaby will be conducting inspections at various times of the day and night to ensure that all businesses are in compliance. If you are found not to be in compliance with the Public Health Order and the Burnaby Business Licence Bylaw the business will be subject to enforcement action which could include fines and may result in your business licence being suspended or cancelled.

The Public Health Order is current to Wednesday March 25, 2020 the onus is on the business operator/owner to ensure that they are keeping up to date with any future Provincial Health Orders that may impact their operations.

If you have any questions or concerns please let me know.

Regards,

Andy Dhaliwal

Property Use Coordinator

Direct: 604-293-6510

City of Burnaby | Public Safety and Community Services Department

City Hall – Licence Office | 4949 Canada Way | Burnaby, BC V5G 1M2

Our Vision: A world-class city committed to creating and sustaining the best quality of life for our entire community.

The contents of this email message are solely the writings, thoughts and/or ideas of the account

holder and may not necessarily reflect those of the City of Burnaby. If you have any concerns regarding inappropriate use of this account please e-mail the postmaster@burnaby.ca



ENVIRONMENTAL HEALTH SERVICES
HEALTH PROTECTION

CLOSURE ORDER

TO: Dahlak Restaurant Ltd OWNER/OCCUPIER OF: Dahlak Mediterranean and East

African Restaurant, located at 7868 Edmonds St, Burnaby, Canada V3N 1B8

This is an ORDER issued pursuant to Section 30(1)(b) of the Public Health Act and as a result of an inspection conducted under authority of Section 25 (1) of the Public Health Act.

Reason(s) the ORDER is made:

This written ORDER is to follow up a verbal ORDER issued on March 30, 2020:

This premises was found to be operating in contravention of the Public Health Order issued by Provincial Health Officer Dr. Bonnie Henry on March 20, 2020 based on information provided by the RCMP.

The following action must be taken by you:

You must not operate your premises until:

- 1) Health approval is granted by Fraser Health Authority, AND
- 2) Your business license is restored by the City of Burnaby

This action must be completed:

☒ Immediately upon issuance of this ORDER,

OR

☐ On or before

_____ Date

_____ Time

The date on which, or the circumstances under which this ORDER is to expire (if known):

A further inspection or inspections may be conducted to ensure compliance with this ORDER. Failure to comply with the terms of this ORDER may result in the issuance of a Violation Ticket, prosecution, or other legal action as may be appropriate to enforce this ORDER. The Public Health Act provides that a health officer or health authority or person ordered to comply with an ORDER issued under section 33(1) may recover reasonable costs from the person who was subject to the original ORDER.

Section 43 of the Public Health Act provides that a person affected by an ORDER, or the variance of an ORDER may request the health officer who issued the ORDER to reconsider the ORDER or variance.

30-Mar-2020

Date

[Signature]
Signature of Environmental Health Officer

604 918 7509

Telephone

I acknowledge receipt of a copy of the ORDER

DE SENT VIA REGISTERED MAIL
Signature



Bylaw Violation Notice

BYLAW VIOLATION NOTICE #: L201089

PLU: 1149-Lic Violation

ISSUED TO: DAHLAK RESTAURANT LTD

ISSUE DATE: March 30, 2020

ADDRESS: 7868 EDMONDS ST BURNABY, BRITISH COLUMBIA V3N 1B8

BYLAW NAME: BBY BUSINESS LICENCE BYLAW

SECTION: 11.8

DESCRIPTION OF CONTRAVENTION: L2205-FAIL TO COMPLY W BYLAW

SUBSECTION AND DESCRIPTION:

FAILURE TO COMPLY WITH PROVINCIAL PUBLIC HEALTH ORDER

CONTRAVENTION DATE AND TIME: March 28, 2020 3:00 pm

CONTRAVENTION LOCATION: 7868 EDMONDS ST

ASSOCIATED TICKETS:

ISSUING OFFICER: 00506-DHALIWAL

PAYMENT:

IF PAID ON OR BEFORE:	April 21, 2020	400.00
IF PAID AFTER:	April 21, 2020	500.00

Option 1 - PAYMENT

(If you pay this ticket you CANNOT dispute it)

Payment by credit card will be charged a 1.75% non-refundable fee for credit card merchant fee recovery. Bylaw Number: 13640

Pay by Web: www.burnaby.ca/paytickets
 Mailed or delivered to: City of Burnaby - Tax Office

Violation Payment

4949 Canada Way

Burnaby, BC V5G 1M2

*Bylaw Violation Notice Number must appear on Cheque or Money Order



Licence Office
Public Safety and Community Services Department

2020 March 30

FILE #: BYL20-00205

DAHLAK RESTAURANT LTD

**SUBJECT: CANCELLATION OF BURNABY BUSINESS LICENCE (BUS19-00344)
ISSUED TO DAHLAK RESTAURANT LTD OPERATING AT 7868
EDMONDS STREET, BURNABY, BC**

Despite previous warnings and correspondence advising that Dahlak Restaurant Ltd. must abide by the Provincial Public Health Order and the Burnaby Business Licence Bylaw, an inspection conducted on 2020, March 28 by the RCMP revealed that your business operated in contravention of both.

Due to the failure of the business to abide with the Provincial Public Health Order (*attached*) and Section 11.8 of the Burnaby Business Licence Bylaw, which states in part that:

Every holder of a business licence shall comply at all times with every City bylaw or enactment of the Province or Canada or other governmental authority in respect to the business and the business premises named in the business licence.

The business licence (BUS19-00344) issued to Dahlak Restaurant Ltd is forthwith cancelled.

Dahlak Restaurant Ltd. is required to cease operation of the business located at 7868 Edmonds Street immediately.

Should the business continue to operate, Bylaw Violation Notices for operating without a valid business licence, with a fine amount of \$500 per violation, will be issued daily. If required the city may also undertake legal action to ensure bylaw compliance.

Section 7.1(a) of the *Burnaby Business Licence Bylaw 2017* authorizes the Chief Licence Inspector to cancel a business licence “where a holder of a business licence has failed to comply with a term or condition of this Bylaw or the business licence”.

Additionally, Section 8.1 of the bylaw provides for a holder of the business licence that has been cancelled by the Chief Licence Inspector, to “request that Council reconsider the decision by submitting a request for reconsideration to the City Clerk within 30 days of the decision of the Chief Licence Inspector”.

Dhalak Restaurant

Subject: Cancellation of Burnaby Business Licence

2020 March 30.....Page 2

If you wish to apply to have this matter heard before Council please contact the Office of the City Clerk within 30 days of the date of this letter. The Clerk can be reached at (604)294-7290, via email at clerks@burnaby.ca or by mail at: City of Burnaby Clerk's Office, 4949 Canada Way, Burnaby, BC, V5G 1M2.

If you have any additional questions please contact the undersigned.

Dan Layng

Dan Layng

Chief Licence Inspector

Email: Dan.Layng@Burnaby.ca

Telephone (604)294-7329



Report to Burnaby City Council

2020-04-21

Dahlak Restaurant, 7868 Edmonds St

Synopsis

On 2020-03-28 at 16:01 hrs, Burnaby RCMP, received a call to attend Dahlak Restaurant regarding a bylaw file. Complainant, [REDACTED] reported for the second day in a row the parking lot was full at the above location and there were many people inside. [REDACTED] was unable to advise bylaw as it was closed on a Saturday. [REDACTED] was concerned for the spread of COVID-19. Police arrived on scene and noticed approximately 20-25 people inside the restaurant. The front door was locked and when the occupants saw police they ran out the back door. The occupants were not abiding by social distancing. The occupants were playing cards and eating food inside the above location. Police advised the owner, Amanuel MIHRTEB KIDAN that bylaw would be notified about the file. Cst. DULAY advised bylaw of the file. [REDACTED] was updated by Cst. DYCK and advised to call police and or bylaw if [REDACTED] saw this happen again. Photos of scene sent to master file.

Narrative

DISPATCH:

On 2020-03-28 at 16:01 hrs, Burnaby RCMP, received a call to attend Dahlak Restaurant regarding a bylaw file. Complainant, [REDACTED] reported for the second day in a row the parking lot was full at the above location and there were many people inside. [REDACTED] was unable to advise bylaw as it was closed on a Saturday. [REDACTED] was concerned for the spread of COVID-19.

POLICE ACTION:

Police arrived on scene and noticed approximately 20-25 people inside the restaurant. The front door was locked and when the occupants saw police they ran out the back door. The occupants were not abiding by social distancing. The occupants were playing cards and eating food inside the above location. Cst. DULAY observed that food was being prepared in the back and in the front there was a card game in progress, including the service of beverages. The beverages appeared to be tea, poured in to small little glass tea cups. There were no visible poker chips on the table, nor a score pad. But the game was played on a very small coffee table, where the individuals sitting would be shoulder to shoulder.

Police advised the owner, Amanuel MIHRTEB KIDAN that bylaw would be notified about the file. Cst. DULAY advised bylaw of the file. TAM was updated by Cst. DYCK and advised to call police and or bylaw if she saw this happen again. Photos of scene sent to master file.

Cst. DULAY statement:

On 2020/03/28 Cst. DULAY, Cst. COPP and Cst. DYCK attended the Dahlak Restaurant, located at 7868 Edmonds St. Burnaby BC for a By Law infraction.

Police received information that the Dahlak Restaurant was continuing to operate against the Provincial Health Authority.

Police Attendance:

Cst. DULAY and Cst. DYCK attended the restaurant and observed that it appeared to be closed. As the open sign had been turned off, the lights were off and a curtain was draped down the main window. Cst. DULAY pulled on the door and noticed it was locked and then began to peak inside the restaurant. Cst. DULAY observed multiple individuals inside and began to conduct door knocks. Cst. DULAY gave verbal command for the individuals to open the door as it was the police. Cst. DULAY then observed 20-25 individuals run out the back door.

Cst. DULAY, Cst. DYCK and Cst. COPP ran to the back of the establishment and were able to stop majority of the individuals inside the restaurant. The individuals who were stopped were not identified by Cst. DULAY. Cst. DULAY observed that food was being prepared in the back and in the front there was a card game in progress, including the service of beverages. The beverages appeared to be tea, poured in to small little glass tea cups. There were no visible poker chips on the table, nor a score pad. But the game was played on a very small coffee table, where the individuals sitting would be shoulder to shoulder.

Cst. DULAY has notified the Burnaby Emergency Centre, who are in charge with all COVID-19 occurrences in Burnaby. They will be contacting By-Law and correct authorities to deem the correct punishment.

On March 30th 2020, Cst. DULAY spoke to [REDACTED] from Provincial Fraser Health, who advised the owner of Dhalak Restaurant was sent a letter about COVID 19 restrictions as Fraser Health had received a complaint about this restaurant still being open for business when it should have been closed.

Cst. COPP statement:

On 2020-03-28 at approximately 1615 hours, Cst COPP was in the area of 6th St and Edmonds St, Burnaby, BC while on general duty. Cst DYCK and Cst DULAY were dispatched to a bylaw file at 7868 Edmonds St.

Complainant, [REDACTED] stated [REDACTED] saw people inside the restaurant for the second day in a row and was concerned for the spread of COVID-19.

Cst COPP was not dispatched to the file but stood outside the restaurant. Cst DULAY peered through the window and saw people running out the back.

Cst COPP ran to the back and stopped approximately 4 people from leaving and a vehicle (no plate obtained) and the 4 people were not identified. With the back door of the restaurant open, Cst COPP could see a table with multiple chairs, drinks, and playing cards. Police were invited inside by owner, Amanuel MIHRTEB KIDAN. Cst COPP observed a second table with multiple decks of cards.

Cst COPP told MIHRTEB KIDAN that there could be fines for operating the business during COVID-19, especially if he was running the business out the back door. MIRHTEB KIDAN insisted he was shutting down the restaurant and stated the people were there to pick up food. When questioned why the people were attempting to leave in a vehicle without the food MIHRTEB KIDAN could not provide an answer. MIHRTEB KIDAN stated he does not have an arrangement with a food delivery service and is trying to feed his family due to low income. Cst COPP cautioned MIHRTEB KIDAN on the BC provincial health authority order and his conducting business out the back door which meant he could receive fines or close down. MIHRTEB KIDAN was apologetic by saying he was "sorry" and not to report the incident. MIHRTEB KIDAN also said he would shut down until further notice.

Report compiled by Cst. Darnell DYCK

Burnaby RCMP, District 3, General Duty

MICHAEL GOLDEN

Law Corporation

208 – 4250 Kingsway
Burnaby, British Columbia
Canada, V5H 4T7

Tel: (604) 439-2420
Fax: (604) 435-2059
email:
info@michaelgoldenlawyer.com

April 2, 2020
Our File No.: 00893

By Email: clerks@burnaby.ca

City of Burnaby Clerk's Office
4949 Canada Way
Burnaby, BC
V5G 1M2

Attention: City Clerk

Dear Sir/Madam:

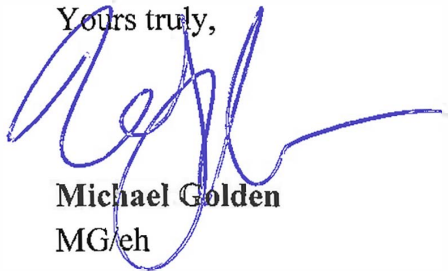
**Re: By Law File No.: BYL20-00205
Dahlak Restaurant Ltd. Operating at 7868 Edmonds Street, Burnaby, BC**

We are counsel for Dahlak Restaurant Ltd. and have been instructed to write to you regarding the cancellation of the business licence for 7868 Edmonds Street dated March 30, 2020.

Please consider this letter a request for a reconsideration pursuant to Section 8.1 of the *Burnaby Business Licence Bylaw*. My client requests that you refer this matter to Council to reconsider the decision to cancel our client's business licence.

It is unlikely that there will be anyone at the premises at 7868 Edmonds Street because the business cannot operate. Please forward any correspondence related to this matter to our office.

Yours truly,



Michael Golden
MG/eh

MICHAEL GOLDEN

Law Corporation

208 – 4250 Kingsway
Burnaby, British Columbia
Canada, V5H 4T7

May 25, 2020
Our File No. 00893

Tel: (604) 439-2420
Fax: (604) 435-2059
email:
info@michaelgoldenlawyer.com

Via E-Mail: Kate.OConnell@burnaby.ca

City of Burnaby
4949 Canada Way
Burnaby, BC
V5G 1M2

Attention: Kate O'Connell

Re: Dahlak Restaurant Ltd., 7868 Edmonds Street, Burnaby, BC
Reconsideration Hearing June 8, 2020

Dear Sirs/Madam:

Further to your letter of May 14, 2020 enclosed you will find the following:

1. Statutory Declaration of Amanuel Mihretab sworn the 22nd day of May 2020;
2. Copies of four videos of the premises at 7868 Edmonds Street.

The first video is from a surveillance camera on the outside of the premises. The video shows the police arriving at approximately 15:17:28 on March 28, 2020. One of the officers is looking into the premises and both officers depart at 15:18:14 hours. The second video shows the inside of the premises at 15:18:05. The seating area of the restaurant appears in the foreground and the video shows the chairs placed on top of the tables and that the dining area is empty. Approximately five males are seen leaving through the rear door of the premises.

The third video is at 15:16:26 on March 28, 2020. No activity is visible in the foreground in the dining area of the restaurant. Mr. Mihretab appears as he runs from the rear of the restaurant to the front of the restaurant and one male is seen entering through the rear door and meeting a second male who appears moving around at the rear of the restaurant.

The final video was taken recently and shows the interior of the restaurant including the dining area with chairs piled on top of tables. The rear of the restaurant including a red couch and a small table are also visible at the rear area. The purpose of the video is to

demonstrate that there is not adequate room at the rear of the restaurant to comfortably seat 20 or 25 people.

The following people will be present at the hearing:

1. Amanuel Mihretab;
2. Samuel Tsehay Tesfazgai;
3. Mehari Debessay Gebrekidan;
4. A Tigrinya translator has been arranged;
5. Counsel, Michael Golden.

Please advise me as to whether we are required to take any further steps to be able to play the video tapes at the Reconsideration Hearing.

Yours truly,



MICHAEL GOLDEN
MG*dl

Canada, Province of
British Columbia

) IN THE MATTER OF
) OF DAHLAK RESTAURANT LTD.
) 7868 EDMONDS ST., BURNABY, BC

STATUTORY DECLARATION

I, AMANUEL MIHRETAB, businessowner, of 7868 Edmonds Street, Burnaby, British Columbia solemnly declare that:

1. [REDACTED]
2. [REDACTED]
3. [REDACTED]
4. [REDACTED]
5. The Dahlak restaurant prepares and sells Eritrean food. Members of the Eritrean community in the lower mainland attend at my restaurant to purchase our traditional dishes.
6. On Thursday March 26, 2020 I received an e-mail from Andy Dhaliwal from the City of Burnaby advising me that someone had complained that I was conducting business in violation of the COVID-19 rules. I told Mr. Dhaliwal that I intended to close my business because I could not earn enough money from takeout orders.
7. On March 27, 2020 I attended at my business but I did not open the front door. I was expecting some people to attend at the business to purchase takeout food. My cousin [REDACTED] was present and he was working in the kitchen.
8. At about 4:00 p.m. there were five Eritrean men, [REDACTED]
[REDACTED] in the back

area of the restaurant. They were seated at a table in the back of the restaurant waiting for food that they had ordered to take out. They were not playing cards.

9. There was a deck of cards located near where my customers were seated but they were not engaged in a card game.
10. The area at the rear of my business is not large enough to accommodate 20 people.
11. I was on the phone when I heard the police knocking. The five men who were seated at the rear of my restaurant left out the back door soon after the police knocked.
12. The parking lot at the rear of my business is shared with an Italian restaurant, a sushi restaurant and a martial arts studio. There may have been cars in the parking lot for some of the other businesses at the time that the police arrived.
13. Soon after the police arrived a group of four Eritrean males from Abbotsford who did not know that my business was not open came into the parking lot. I believe that these are the four men who are referred to in the police report. These men were not inside the restaurant at the time that the police arrived. I believe other people, particularly members of the Eritrean community who live near my business attended the parking lot to see why the police were there.
14. My business was not open for dine in service on March 27, 2019. I was selling food only for take-out. The chairs in the dining area had been stacked on top of the tables and there were no servers on duty.

I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath and by virtue of the *Canada Evidence Act*.

Declared before at the City of Burnaby,)
in the Province of British Columbia)
this 22 day of May, 2020.)
)
)
)
)
)
)

A commissioner for taking Affidavits)
In the Province of British Columbia)

MICHAEL GOLDEN
Barrister and Solicitor
#208 - 4256 KINGSWAY
BURNABY, B.C. V5H 4T7
PHONE: 604-439-2420


AMANUEL MIHRETAB