
TO: CHAIR AND MEMBERS
FINANCIAL MANAGEMENT COMMITTEE

DATE: 2017 October 18

FROM: DIRECTOR PUBLIC SAFETY AND
COMMUNITY SERVICES

**SUBJECT: PROPOSED NEW BURNABY BUSINESS LICENCE BYLAW, BUSINESS
LICENCE FEES BYLAW AND RELATED BYLAW AMENDMENTS AND
REPEALS**

PURPOSE: To provide information to Council on the proposed new Burnaby Business
Licence Bylaw and Business Licence Fees Bylaw and seek Council authorization
to bring forward the necessary bylaws to implement the new Business Licence
Bylaw and Business Licence Fees Bylaw and amend and repeal related bylaws.

RECOMMENDATIONS:

1. **THAT** Council authorize the City Solicitor to bring forward bylaws to:
 - (a) implement a new Burnaby Business Licence Bylaw and repeal the following bylaws:
 - (i) Burnaby Adult Service Business Regulation Bylaw 2001;
 - (ii) Burnaby Home Rental Business Licence Bylaw 2014;
 - (iii) Burnaby Fetal Alcohol Syndrome Warning Sign Bylaw; and
 - (iv) Burnaby Post Box Rental Agency and Mail Drop Service Regulations Bylaw;
 - (b) implement a Burnaby Business Licence Fees Bylaw; and
 - (c) amend the Burnaby Bylaw Notice Enforcement Bylaw 2009.
2. **THAT** notice of the proposed new Business Licence Bylaw, Business Licence Fees Bylaw and related repeal and amendment bylaws be advertised in the local newspaper for two consecutive weeks after first readings of the above bylaws, and also be provided to the Burnaby Board of Trade.

EXECUTIVE SUMMARY

This report recommends that Council repeal various bylaws related to business, including the Burnaby Business Licence Bylaw, and enact a comprehensive bylaw to regulate business activity in Burnaby. The proposed *Burnaby Business Licence Bylaw 2017* (copy attached) will modernize business regulations and align the regulations with contemporary business operations. The new Burnaby Business Licence Bylaw 2017 will result in enhancements for both businesses and the City in the following key areas;

Business Operator's Bylaw Responsibilities

Under the current regulatory structure a business may be regulated under many different bylaws. The proposed Burnaby Business Licence Bylaw 2017 will combine all business regulations as separate schedules rather than multiple separate standalone bylaws. Condensing business regulations under one bylaw will improve businesses owners understanding of their bylaw requirements.

Business Licence Fee Bylaw

Presently the business licence fees are contained in a schedule to the bylaw. Going forward it is proposed that the fees be incorporated into a new *Business Licence Fee Bylaw*. Placing the fees in a separate bylaw will enable inclusion of specific business regulations as schedules to the bylaw and will make it more efficient to amend the bylaw in the future.

City Resources

In order to address a growing demand on City resources to complete multiple steps on all new business licence applications, the new bylaw establishes an "Application Review" process. This review will be undertaken upon receiving a business licence application and will be based on information provided by the applicant. Businesses will not be permitted to operate during this period. Staff anticipate the time required to process new business licence applications will be reduced with the implementation of the new Burnaby Business Licence Bylaw 2017.

Upon completion of the review, new business applicants will receive; a) Approval, b) a Disapproval, or c) Conditional Approval, to operate. The Conditional Approval is granted in cases where the applicant has demonstrated the ability to safely operate the business, however additional information or inspections of the business premises is required in order to complete the application process.

Yearly Business Licence Renewal Process

The new Burnaby Business Licence Bylaw 2017 will clarify the yearly renewal process for business licenses and outline the consequences for late and nonpayment of fees. The current

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bylaw includes provisions for the addition of a \$50 fee to be charged on overdue accounts at 30, 90 and 150 days past due. The current bylaw provides no direction for accounts that remain unpaid beyond 150 days. The new Burnaby Business Licence Bylaw 2017 will include a provision for cancellation of a business licence for non-payment of fees after 60 days. Prior to the business licence cancellation, there will be three subsequent renewal notices provided as well as attendance by staff at the business premises to advise the owner/operator of consequences for non-payment of fees.

New Business Licence Categories

The new Burnaby Business Licence Bylaw 2017 will introduce new licensing categories for special events businesses and for certain types of business that share a location. A *Special Event Business Licence* will be issued to short term, for-profit business operations such as fairs, concerts or sporting events. The fee for a Special Event Licence will be \$150 and will be valid for a maximum of 45 days, versus a minimum of \$600 and valid for one year under the current bylaw. Community events that are not-for-profit will not be required to obtain a Special Event Licence.

A *Shared Location Business Licence* will be issued to businesses that qualify for a business licence at a location that is already licensed for that purpose. Examples of this category are shared locations among healthcare practitioners and other similar professions. The initial business will pay the first year fee (typically \$600) and subsequent businesses at the shared location will pay the yearly renewal fee (typically \$180) on their first year of operation.

Penalties for Bylaw Noncompliance

In cases where a bylaw violation results in enforcement action, the City has two options, firstly the issuance of a bylaw violation notice(s) under the *Burnaby Bylaw Notice Enforcement Bylaw, 2009* and secondly, bylaw prosecution through the courts.

For those violations that require court proceedings, the cost to the City is often expensive. The *Community Charter* permits a municipality to establish a minimum fine and sets the maximum fine at \$10,000. The existing bylaw does not provide a minimum fine amount however does set the maximum fine amount at \$500. The new Burnaby Business Licence Bylaw 2017 sets the minimum fine at \$5,000 and maximum fine at \$10,000 when the City successfully prosecutes for a violation of the bylaw.

REPORT

1.0 INTRODUCTION

The Burnaby Business Licence Bylaw is the primary bylaw designed to manage business activity in Burnaby and to ensure that businesses are in compliance with all applicable regulations and legislative requirements. The bylaw was original adopted in December of 1950 and has been amended a total of 32 times. The bylaw was enacted over 60 years ago and as a result much of

the regulations no longer align with current business practices. For example, the bylaw refers to outdated businesses such as cyber centres, circuses, hawkers, hucksters and peddlers and imposes restriction on these types of operations. In the modern context these regulations are no longer required.

Staff propose that Council adopt an updated Burnaby Business Licence Bylaw that better reflects contemporary business operations in Burnaby. The new bylaw contains modern regulations that are presented in a clear and precise manner designed to increase transparency and improve business awareness of their bylaw responsibilities. Attachment #1 is a draft of the proposed bylaw.

The new bylaw also offer greater ability to add business regulations should it become necessary to do so in the future. Although it is difficult to fully anticipate future business models, the bylaw affords greater flexibility to adapt to a changing business environment.

2.0 BACKGROUND

The *Community Charter* provides Council the authority to regulate and licence business activity. Generally, all businesses are regulated under the Burnaby Business Licence Bylaw however additional bylaws exist that regulate specific business types. These added bylaws are specific to various business segments and add requirements to these operations in addition to the general requirements contained in the Business Licence bylaw.

In conjunction with the development of the Licence, Inspections and Permits System (scheduled to take effect 2017 October 02), staff conducted a comprehensive review of all of the bylaw regulations relating to businesses and have found opportunities for improvements. As a result of the review staff recommend that Council repeal the current Burnaby Business Licence Bylaw, and other bylaws relating to specific businesses, and adopt a comprehensive new bylaw for the reasons discussed in this report.

3.0 IMPROVEMENTS - THE PROPOSED NEW BUSINESS LICENCE BYLAW

The new bylaw offers improvements that will be realized by both the City and the business community. In regards to the City, once implemented the bylaw will result in a more efficient use of City staff resources needed to approve business licence applications and facilitate better enforcement.

The business community will benefit from the clarification of the various business regulations and an improved yearly licence renewal notification process. Also, new licensing options will be added resulting in reduced fees and quicker licensing issuance for certain business types.

The benefits gained from the new bylaw include:

- All business regulation bylaws consolidated into the new Business Licence Bylaw 2017;
- Fees related to business licencing incorporated into a new Business Licence Fee Bylaw;
- Provisions for an “Application Review” process and a “Conditional Business Licence”;

- Clarification of the yearly business licence renewal cycle and penalties identified for non-compliance;
- New business licensing categories established for special events and shared locations; and
- Increased prosecution fine amounts for noncompliant businesses.

3.1. Consolidation of Business Regulation Bylaws as Individual Schedules under the Burnaby Business Bylaw.

Regulating businesses under more than one bylaw makes awareness of any specific regulations difficult for business owners. In an effort to improve transparency and increase awareness it is proposed that over time all business regulations (general and specific) be incorporated into the new Business Licence Bylaw. Rather than having multiple business regulations bylaws, all regulation in respect to specific business categories will be attached to the Business Licence Bylaw as supplementary schedules.

Due to the time and resources required to review specific regulations, the proposed Business Licence Bylaw initially only includes schedules for the following businesses:

- (a) Adult services and body rub businesses;
- (b) Home rental businesses;
- (c) Liquor service establishments (fetal alcohol syndrome sign requirement); and
- (d) Post box rental and mail drop service businesses.

These schedules will replace the following bylaws which are proposed to be repealed:

- (a) Burnaby Adult Service Business Regulation Bylaw, 2001;
- (b) Burnaby Home Rental Licence Bylaw, 2014;
- (c) Burnaby Fetal Alcohol Syndrome Warning Sign Bylaw; and
- (d) Burnaby Post Box Rental Agency and Mail Drop Service Regulation Bylaw.

As time and resources permit additional regulation bylaws will be reviewed and added to the new Business Licence Bylaw as Schedules.

3.2. Proposed New Business Licence Fee Bylaw

Under the current bylaw the fees for a Business licence are contained in Schedule A of the bylaw. The schedule has three general fee types for each business category:

- Initial Year fee (also referred to as “first year fee”) is higher than the Yearly Renewal fee in order to recover the costs of review of the applications and, in some cases, inspections of the proposed business premises by various City departments, including Building, Fire and Engineering.)
- Renewal fee
- Prorated First year fee

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It is proposed that instead of having the fees contained in a schedule to the bylaw, that a new Burnaby Business Licence Fees Bylaw be established. The purpose of the separate Fees Bylaw is to make it more efficient to amend the Bylaw in the future and to facilitate the inclusion of specific regulations relating to certain businesses as schedules in the new Business Licence Bylaw. The fees for business licences will remain unchanged for 2018.

3.3. Application Review Process and Conditional Business Licence

The current bylaw provides the Chief Licence Inspector the power to grant a license once satisfied that an applicant has complied with all regulations regarding “building, zoning, health, sanitation and business” in respect of the proposed business. Historically the Licence Office has relied on the technical expertise of other departments or external agencies to determine if an applicant meets these regulations. In most cases the departments conduct onsite inspections of the business premises in order to confirm compliance and respond to the Licence Office. With the number of new business licence applications growing year over year, the time required to conduct these inspections and provide responses back to the Licence Office has steadily increased. Responding to business licensing referrals, particularly for the Building and Fire Departments, now consumes a considerable amount of their staff resources.

Instead of routinely expending City resources by inspecting the business premises of almost all new applicants, a new licensing review process is proposed. In collaboration with the Fire and Building Departments and the City Solicitor, the Licence Office has developed a declaration questionnaire that all new applicants will be required to submit in addition to the standard application (Attachment #2).

The declaration will identify businesses that may require inspection and further review by confirming; (a) the consumption or production of hazardous materials; (b) uses on the site that could present risk; (c) any planned construction or alterations to the premises; and (d) the existence and validity of required life safety equipment. The declaration places the responsibility on applicants to verify and report information on the nature and status of their business activities and premises and provide this information to the City.

All declaration responses will be submitted to the relevant City departments to facilitate an initial in-office review of the application. During the application review process, businesses will not be permitted to operate.

After conducting the in-office review the departments will provide the Chief Licence Inspector with one of three possible responses:

- 1) Approved, the business application may proceed with no further inspections required;
- 2) Disapproved, based on the information provided the business is noncompliant and cannot open for operation; or
- 3) Conditional approval is granted.

An applicant will subsequently be advised whether their application is Approved, Disapproved or Conditionally Approved. Should the applicant be granted a Conditional Approval, the Chief

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Licence Inspector will issue a “Conditional Business Licence” provided Zoning Bylaw requirements are also met. These licences will only be valid for the period of time and on terms and conditions set by the Chief Licence Inspector. The intent is to permit a validity period of 180 days so that City departments can gather the necessary information and/or complete relevant inspections. If the Chief Licence Inspector is not satisfied with the safety or other matters relating to the operations during the validity period, the Conditional Business Licence can be cancelled. In cases where minor deficiencies are discovered, applicants will be advised that the deficiencies must be rectified and the business premises re-inspected prior to the expiry of the Conditional Business Licence.

Since holders of Conditional Business Licences will be made aware at the outset that the licence has a fixed end date and the lawful continuation of the operation beyond that date is dependent on correcting all deficiencies, these business owners will have a greater incentive to ensure compliance prior to the expiry date. Conditional Business Licences are particularly useful in the case of the Fire Department where it is often preferable to inspect a business while the premise is occupied and the business is operational. The cost for a Conditional Business Licence will be the same as an Initial Business Licence and will follow the fees set out in the Business Licence Fees Bylaw. If a Conditional Business Licence is converted to a full business licence there will be no additional charge.

3.4. Yearly Business Licence Renewal Requirement and the Penalty for Non-Compliance

The current bylaw contains provisions for an additional penalty of \$50 to be added to all unpaid accounts at 30, 90, and 150 days past the January 01 due date (possibly totalling \$150 per year). However, the current bylaw does not contain any explicit language effectively cancelling the business licence at the end of the penalty period.

In order to address this gap, business licences and renewal licences issued under the new Business Licence Bylaw will continue to be valid for a calendar year, however, if renewal fees for these licences are not paid by December 31 each year, a single late payment fee of \$50 will be levied. If renewal fees remain unpaid on March 01 each year, the business licence will be cancelled and a new application is required in order to reinstate the business. The business would be subject to bylaw notices and/or legal action for operating without a valid business licence past this March 01.

To ensure all businesses are fully aware of the yearly renewal licence fees and the implications of late payments, the Business Licence Office will adopt the following three step notification procedure:

1. On November 01 a renewal notice will be sent to all businesses identifying the renewal fees.
2. On December 01 a second reminder renewal notice sent to all businesses that remain unpaid. This notice will advise the business that should the notice remain unpaid after December 31 an additional \$50 fee will be added to the account.

3. On January 01 all outstanding accounts will be charged the \$50 late payment fee. Licence Office staff will then make personal contact with these business to explain that if payment is not received in full before March 01 the business licence will be cancelled and a new application would be required in order to re-instate the business licence. In addition to the personal visit follow up letters will also be sent to businesses to clarify the requirements.

The new Business Licence Bylaw also gives the Chief Licence Inspector the authority to not renew a business licence if there are outstanding City or Court penalties and fines in respect to a business or business premises. This provision is intended to incentivize business owners to promptly pay penalties and fines owing to the City.

To ensure all businesses are provided an opportunity to adjust to the bylaw changes, in the inaugural year of the new bylaw it is recommended that Council authorize waiving the \$50 additional fee. The Licence Office will still make personal contact with those businesses that remain unpaid after 2018 January 01 to ensure that the business is fully aware of the bylaw changes and the implications of nonpayment. Failure to pay by 2018 March first 01 will still result in the cancellation of the licence.

NOTE: Although plans are underway to adjust the business licence renewal cycle to an anniversary model rather than the current calendar model, for the immediate future business licences will continue to be valid from January 01 to December 31.

3.5. New Business Licencing Process for Special Events and Shared Locations

The new Business Licence Bylaw also introduces a Special Event Business Licence. Currently all temporary or one time businesses wanting to setup in Burnaby are required to purchase a full year business licence even if the business only intends to operate on a short term basis. In many cases, these types of businesses are in response to “special events” such as sporting events, fairs, concerts or other similar events. In recognition of these types of operations, the Special Event Business Licence can be issued under the new Bylaw and will licence temporary businesses for up to a maximum of 45 consecutive days (an initial 30 days and a 15 day extension where warranted). All applicants will need to demonstrate that the business complies with zoning, building, health, fire and other regulations, similar to other applicants under the new Business Licence Bylaw. The fee for a Special Event Business Licence will be \$150.

The new Business Licence Fee Bylaw will introduce a *Shared Location Fee* for certain business categories where similar business occupy common space. It is a common practice for certain business types, such as healthcare professionals, to occupy a common location even though each operator represent a distinct business and require individual business licences. The businesses operate from a common civic location in order to limit costs. Recognizing that after the first business licence has been approved any subsequent application at the same location generate very limited additional work for the City, the new applicant will not be charged the full initial business licence fee (which reflects the City’s costs of review and inspection for new

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applications) and instead will pay the equivalent of the reduced renewal fee for the business category.

The Shared Location Fee will not be available to all business categories that share common space. Business types that require further City review and onsite inspections in respect to building, fire, health and other matters, will not be eligible. Examples of these business types include manufacturing operations, auto body repair and paint shops, and contractors.

All business categories that are eligible for a shared location fee will be identified in the new Business Licence Fees Bylaw. General office uses such as accountants, architects, real estate agents, medical practitioners and veterinarians are examples of eligible businesses.

3.6. Penalties for Bylaw Noncompliance

The two methods that are typically used by the City when faced with bylaw noncompliance are court proceedings, and/or the issuance of a bylaw violation notice. Regarding the court proceedings, currently the maximum fine set out in the existing Business Licence Bylaw for an offence is \$500. This is well below the maximum of \$10,000 permitted under the Community Charter, which also permits a municipality to establish a minimum fine. The new Business Licence Bylaw proposes a minimum fine of \$5,000 and maximum fine of \$10,000 where the City successfully prosecutes a person for violation of the bylaw. These prosecutions involve court proceedings and are typically very expensive to pursue and require significant time and effort on the part of City staff. The increased fine amount reflects the cost to the City to undertake court action and may well act as a deterrent.

The alternative method of enforcing compliance with City bylaws is to issue bylaw violation notices under the City's Bylaw Notice Enforcement Bylaw, as permitted by the *Local Government Bylaw Notice Enforcement Act*. These violation notices can be issued by an inspector under the Business Licence Bylaw and appeals are administered through an adjudication process, rather than court proceedings. Although the maximum penalty is \$500 per occurrence (i.e. each day of non-compliance) under this enforcement method, the process is much more efficient for the City and the person receiving the violation notice. The process is used for the current Business Licence Bylaw (and most other City bylaws) and City staff has successfully obtained compliance in most cases using bylaw violation notices.

With the introduction of the new Business Licence Bylaw, the Bylaw Notice Enforcement Bylaw will need to be amended to reflect the new bylaw provisions and penalties for violation of these provisions.

4.0 RECOMMENDATIONS

The proposed bylaw repeals and enactments will provides greater clarity and benefits for business regulation in the City. The new Business Licence Bylaw improves business owners' understanding of the regulation applicable to operating within Burnaby and also enhances the City's ability to enforce the regulations.

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In accordance with this report, staff recommend that Council authorize the following bylaws be brought forward:

- (a) Burnaby Business Licence Bylaw 2017 (substantially in the form set out in Attachment 1) to implement the new business licence regulations and repeal the following bylaws: (i) Burnaby Adults Service Business Regulation Bylaw 2001; (ii) Burnaby Home Rental Business Licence Bylaw 2014; (iii) Burnaby Fetal Alcohol Syndrome Warning Sign Bylaw; and (iv) Burnaby Post Box Rental Agency and Mail Drop Service Regulations Bylaw;
- (b) Burnaby Business Licence Fees Bylaw; and
- (c) a bylaw to amend the Burnaby Bylaw Notice Enforcement Bylaw 2009.

The Community Charter requires that before adopting a bylaw in regards to business regulation, Council must give notice of its intention and provide an opportunity for persons who consider they are affected by the bylaw to make representations to Council. In order to ensure all interested parties are provided sufficient notification, notice of the proposed new Business Licence Bylaw, Business Licence Fees Bylaw and related repeal and amendment bylaws will be advertised in the local newspaper for two consecutive weeks after first readings of the above bylaws. The notice will provide 14 days to make written submissions. All response will be collected and provided to Council prior to further readings and adoption of the bylaws.

In addition to providing notice in the local newspaper staff will also contact the Burnaby Board of Trade to provide notification of the new bylaw.


Dave Critchley
DIRECTOR – Public Safety & Community Services Department

Copied to: Director Finance
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