



SPECIAL COUNCIL MEETING – RECONSIDERATION HEARING **MINUTES**

Wednesday, 2019 October 16

A Special Open meeting of the City Council was held in the Council Chamber, City Hall, 4949 Canada Way, Burnaby, B.C. on Wednesday, 2019 October 16 at 6:00 p.m.

1. CALL TO ORDER

PRESENT: His Worship, Mayor Mike Hurley
Councillor Pietro Calendino
Councillor Sav Dhaliwal
Councillor Dan Johnston
Councillor Colleen Jordan
Councillor Joe Keithley
Councillor Paul McDonell
Councillor James Wang

ABSENT: Councillor Nick Volkow (*due to illness*)

STAFF: Mr. Lambert Chu, City Manager
Mr. Dipak Dattani, Director Corporate Services
Mr. Dave Critchley, Director Public Safety & Community Services
Ms. May Leung, City Solicitor
Cpl. Brian Kermer, Burnaby RCMP
Mr. Dan Layng, Chief Licence Inspector
Mr. Simone Rousseau, Manager Environmental Services
Mr. Vincent Wong, Environmental Services Officer
Ms. Kate O'Connell, City Clerk
Ms. Blanka Zeinabova, Deputy City Clerk
Ms. Nikolina Vracar, Administrative Officer 2

The Special Open Council meeting was called to order at 6:01 p.m.

His Worship, Mayor Mike Hurley recognized the ancestral and unceded homelands of the hə́nqə́mihə́m and Skwxwú7mesh speaking peoples, and extended appreciation for the opportunity to hold a meeting on this shared territory.

2. REQUEST

A) Pure Hookah Lounge
Re: Unfair Contravention of Business Hours of Pure Hookah

Pure Hookah Lounge Inc. submitted a request, appealing the Chief Licence Inspector's decision to cancel the Burnaby Business Licence.

3. REPORT

A) PURE HOOKAH LOUNGE INC. AT 3863 HASTINGS STREET

The City Manager submitted a report from the Chief Licence Inspector providing Council with information on the reasons that led to the cancellation of the Burnaby Business Licence for Pure Hookah Lounge Inc.

Mayor Hurley called upon the Chief Licence Inspector to present the report to Council.

The Chief Licence Inspector summarized the report noting that on 2019 January 3, the RCMP advised the City that they have been called to 3863 Hastings Street on multiple occasions in previous weeks due to citizen complaints about late evening and early morning noise.

The Licence Office staff gathered information from Pure Hookah social media websites and the Chief Licence Inspector referred to page 3, paragraph 1 of the report. Information gathered through the social media websites revealed that Pure Hookah advertised operational hours until 4 a.m., and the business was promoted as hosting special events such as Halloween, New Year's Eve, as well as DJ's playing music and alcohol services.

The Licence Office staff reviewed the complaint calls from the RCMP and the City's Engineering Department related to the business, described in the report on page 3, 3rd and 4th paragraphs. From 2018 December 09 to 2019 March 13, the RCMP reported over 20 calls for service to Pure Hookah, responding to 19 of the calls regarding late evening and early morning business operations. The RCMP officers attending in response to the complaints reported encountering loud music at the business. In some instances the RCMP were required to re-attend on the same evening after previous verbal warning.

The Engineering Department staff from Environmental Services, reported that between 2018 April 14 and 2019 March 13, they received over 30 noise complaints relating to the late night operations of the business. Staff conducted a review of the actions taken to-date to determine if appropriate measures had been implemented to resolve the issues, including:

- The business and property owners had been made aware of the complaints and noise issues and the negative impact it was having on the neighbourhood (attachment 3, summary of Engineering complaints and related actions):
 - The Engineering Department makes note of notifying the business and property owners by way of letter on 2018 April 14 and again on 2018 May 14.
 - In addition to the letters, calls were made to the business owner and property owner on 2018 May 17 to advise of the noise related issues.
- After confirming that the business owner and property owner had been notified of the noise concerns, the License Office staff then looked to see if the business or property owners had received any bylaw violation notices for bylaw non-compliance:
 - Attachment 10 of the report, identifies two bylaw violation notices issued to both the business owner and property owner for Owner/Occupier to allow noise to disturb the neighbourhood.
 - The violation notice issued to the property owner has been paid.
 - The violation notice issued to the business owner was not disputed within the fifteen (15) day time period identified in the legislation, and is currently unpaid.

Having determined that the business owner and property owner were fully aware of the concerns related to the noise and had received bylaw violation notices, the Chief Licence Inspector invited the business to a meeting on 2019 March 14 (page 4, 2nd paragraph). At this meeting the Chief Licence Inspector made the business aware of the City's concerns regarding the business' operations, and the primary concern was the noise generated by the late night business operation and the negative effect on the peaceful enjoyment of the surrounding properties. Operators were further advised that their operations had resulted in an inordinate amount of RCMP calls for service, over 20 calls from 2018 December 9 to 2019 March 13, compared to similar hookah type businesses within the City.

After the 2019 March 14 meeting, the City received nine (9) more complaints between 2019 March 14 and 2019 April 2. The RCMP also reported an additional five (5) calls in relation to noise during the same time period. The RCMP calls from 2018 December 9 to 2019 April 2 totaled at twenty-seven (27) complaints.

As a result of the continuing complaints, City staff created a table that identified complaint calls made to the RCMP and the time that the complaints were received (table on page 5 of the report). It was noted that the majority of the complaints (19/21) were received after 11:00 p.m. On this basis, in an effort to mitigate the noise impact on the neighboring properties and to reduce the RCMP calls for service, while also permitting the business to continue to operate, the Chief Licence Inspector opted to limit the hours of operation of the business from 7:00 a.m. to 11:00 p.m. daily as per his authority under the Burnaby Business

Licence Bylaw 2017, Section 3.2. The Chief Licence Inspector believed that sufficient cause existed to warrant placing conditions on the business licence in respect to business hours of operation. Correspondence detailing the limitation of business hours were mailed to Pure Hookah on 2019 April 3.

After the 2019 April 3 letter was sent to Pure Hookah, the City received fifteen (15) additional complaints between 2019 April 3 and 2019 July 2, reporting business activity past the permitted hours of operation. The RCMP also received six (6) calls for service related to late night noise after 11:00 p.m. Upon responding to the calls, the RCMP found the business operating with customers on site beyond 11:00 p.m. on 2019 April 7, 2019 June 8, and twice on 2019 June 29. As a result of RCMP attendance at the business on 2019 April 7, the Licence Office issued a Bylaw Violation Notice to Pure Hookah on 2019 April 07 for failure to comply with terms or conditions of the business licence (attachment 11). The Notice remains unpaid and was undisputed within the fifteen (15) day time period.

As a result of the ongoing bylaw violations, the Chief Licence Inspector informed Pure Hookah Lounge Inc. by letter dated 2019 July 3 that the business licence has been cancelled pursuant to Section 7.1 of the Burnaby Business Licence Bylaw 2017 and Section 60 of the Community Charter (attachment 2). The Chief Licence Inspector's presentation of the report then concluded.

Mayor Hurley inquired if Council had any questions for the Chief Licence Inspector at this time. With no Council member requesting to speak, the Chief Licence Inspector was dismissed from the presentation desk.

4. APPELLANT SUBMISSION

**A) Dean P. Davison and Dale R. North
Counsel for Pure Hookah Lounge Inc.
Re: Reconsideration Hearing Submission**

Counsel for Pure Hookah Lounge Inc. provided a written submission seeking Council 1) reconsider and overturn the decision of the Chief Licence Inspector, 2) reinstate Pure Hookah's business licence, and 3) overturn any Bylaw Violation Notices related to this matter.

His Worship, Mayor Mike Hurley stated that Council may only consider the first two requests, as Bylaw Notice appeal processes are governed by the *Local Government Bylaw Notice Enforcement Act* and the Burnaby Bylaw Notice Enforcement Bylaw 2009.

Mayor Hurley called the business representatives to the presentation desk so they may present their appeal to Council.

Mr. Manbier Singh (Owner) , Mr. Jason Jose Singh (owner's brother), and Mr. Dean Davison (legal counsel) appeared before Council.

Mr. Davidson stated that the submission by the Chief Licence Inspector did not include evidence that Pure Hookah had breached City bylaws. The speaker referred to City bylaws and reviewed the decibel levels limits and the times at which the limits apply. Mr. Davidson acknowledged that the tickets issued are not the issue, but rather that the business be permitted to stay open.

Mr. Davidson believes that only small group in the neighbourhood is responsible for the majority of the complaints. The speaker drew to the attention of Council the Burnaby RCMP comments contained within the report from the Chief Licence Inspector's stated the complaints were a civil matter. If neighbours don't like what another neighbour is doing there are options, including issuing complaints and that the City is now trying to address the complaints. However, the City is not responsible for resolving all complaints, and has taken the wrong action in its decision to close Pure Hookah.

Pure Hookah Lounge opened in 2017 and there were no complaints at that time, then repeat complaints began later. Complaints should not necessarily result in closure as noise is part of living in a city. Mr. Davidson stated that the specific decibels in the bylaws that were required to be breached to justify the closure were not recorded, and the RCMP was guessing that a breach of the Bylaw occurred.

Mr. Davidson referred to a letter from the property owner stating that the owner was aware of the business type and supported the activities of the business including loud noise at certain times of the day. If neighbours do not like the noise or feel that the noise is nuisance legally then they could sue the landlord, and sue the business which may be difficult, and they likely would not win as the noise was not beyond the level permitted in the Bylaw.

Mr. Davidson referenced the Chief Licence Inspector's comparison of complaints received regarding different hookah lounges in the City. The speaker stated that the decibel levels were not recorded at other hookah lounges and that the complaints made about Pure Hookah are made by only a few individuals wanting to get a better sleep. Mr. Davidson believes that Pure Hookah Lounge noise is not greater than other hookah lounges and questioned if Pure Hookah was a local pub and people were complaining would they similarly be shut down.

Mr. Davidson referred Council to the submission by Pure Hookah, and spoke to the options of judicial review available to the business owners. It is the position of the business that without having the evidence of the breach of the Bylaw, the decision to change the hours and effectively the decision to close the business was arbitrary and improper. The Chief Licence Inspector's report does not

contain evidence of a breach of the Bylaw, doesn't compare apples to apples but references a lot of complaints that could be from one or two people, it does have the police showing up too much but the business has done nothing wrong.

Mr. Davidson requested Council reconsider the decision of the Chief Licence Inspector and not cancel the licence. The owners would like to stay and contribute to Burnaby. The speaker noted problems with the business licence classification as a lounge and that this was not the proper licence. When the business applied for their licence, the City knew the business type, the hours of operation and there is no evidence that the Bylaw was breached. If neighbours don't like the noise then they can wear ear plugs, or close a window, or do something that will allow them to live in a city as noise is part of city living.

Mr. Davidson stated that the business will work with the City to address the issues and that the reason the business was closed was due to the number of complaints and not resulting from a breach of the Bylaw.

Mr. J. Singh noted that he has a letter from the landlord with signatures from the building occupants and they have no problem with the business operating. The next closest building is 280m away and it is practically impossible to hear noise from that far away. The speaker question who the complainants are as they are not building occupants, they could be calling from Abbotsford, the business does not know. The speaker noted that restaurants, i.e. Cactus Club, are very noisy and that Pure Hookah Lounge's noise levels are below that of Cactus Club – will the City now shut down all the Cactus Clubs in Burnaby? The decision to cancel the business licence is taking away the only livelihood of his brother and is not fair.

Mayor Hurley inquired if Council had any questions for the business representatives at this time. With no Council member requesting to speak, the business representatives were dismissed from the presentation desk.

MOVED BY COUNCILLOR CALENDINO
SECONDED BY COUNCILLOR JOHNSTON

THAT Council, in accordance with Sections 90 and 92 of the Community Charter, do now resolve itself into a Closed meeting from which the public is excluded to consider matters concerning the receipt of advice that is subject to solicitor-client privilege, including communications necessary for that purpose.

CARRIED UNANIMOUSLY

MOVED BY COUNCILLOR CALENDINO
SECONDED BY COUNCILLOR KEITHLEY

THAT the Special Open Council meeting – Reconsideration Hearing do now recess.

CARRIED UNANIMOUSLY

The Special Open Council meeting – Reconsideration Hearing recessed at 6:32 p.m.

Council left the Council Chamber, and conducted the Closed portion of the meeting in the Council Committee Room, from which the public were excluded.

CLOSED PORTION OF THE MEETING

Upon the adjournment of the Closed portion of the meeting, Council returned to the Council Chamber and the Reconsideration Hearing resumed.

MOVED BY COUNCILLOR JOHNSTON
SECONDED BY COUNCILLOR CALENDINO

THAT the Special Open Council meeting – Reconsideration Hearing do now reconvene.

CARRIED UNANIMOUSLY

The Special Open Council meeting – Reconsideration Hearing reconvened at 6:54 p.m.

His Worship, Mayor Mike Hurley called forward the Chief Licence Officer and the RCMP member to the presentation desk.

A Council member asked what section of the Noise or Sound Abatement Bylaw the violation notices were served under?

The Chief Licence Inspector advised that the violation notice was issued under Section 4(a) of the Noise or Sound Abatement Bylaw.

A member of Council noted that Section 4(a) is more broad than what is required under 4(b).

A Council member inquired if Section 4(a) of the Noise or Sound Abatement Bylaw required a 60 decibel minimum before a violation ticket can be issued.

The Chief Licence Inspector requested the question be addressed by the City's Environmental Services Officer.

The Environmental Officer joined the Chief Licence Inspector and the RCMP member at the presentation desk and advised Council that Section 4(a) is a general disturbance clause and there is no decibel limit in that section and is based on the complaints received and different people complaining.

A Council member inquired if the complaints received were from the same individual.

The RCMP member noted that it was multiple complainants.

A Council member referred to the decreased business hours, referenced that complaints had been received outside of the permitted operating hours, and inquired if that was a violation of City bylaws.

The Chief Licence Inspector noted that it is a violation of business licence; and the business was issued a bylaw violation notice for 2019 April 7. There were two additional times when the business was found to be operating past the permitted hours of operation and that resulted in the cancellation of the business licence.

A Council member inquired as to the actual date that the business licence had been cancelled.

The Chief Licence Inspector advised that the licence was cancelled on 2019 July 3.

A Council member noted that the business licence had been cancelled on 2019 July 3; however, the RCMP reported a call on 2019 August 10 and referred to a letter from the business informing the City the business would remain open regardless of not having a business licence.

The Chief Licence Inspector confirmed the information summarized by the member of Council.

A Council member inquired regarding seating capacity, and if it was 30 seats.

The RCMP member clarified that the capacity under the licence is 30 occupants, which includes staff.

The Council member referenced the RCMP comments that stated there had more than 30 occupants observed.

The RCMP member confirmed that repeatedly the RCMP had observed more than 30 occupants in the business and that they had engaged the Fire Department to try and bring the number down.

The Council member asked if there was substantially more occupants observed than permitted.

The RCMP member stated that on different occasions the RCMP counted the occupants as 32, 35, and 39.

A Council member inquired about the authority of the Chief Licence Inspector to limit the hours, and inquired as to why 11:00 p.m. was chosen as the operating hour restriction.

The Chief Licence Inspector referred to the report noting the large number of complaints received by the City and RCMP occurred after 11:00 p.m. (19/21). Based on those complaints the decision was made to restrict the hours of operation to 11:00 p.m.

The Council member inquired as to when the letter outlining the hour restriction was sent to the business.

The Chief Licence Inspector stated that the letter was sent to the business owners on 2019 April 3.

The Council member asked if complaints were received beyond 11:00 p.m. after the hours had been restriction on 2019 April 3.

The Chief Licence Inspector confirmed that further noise complaints were received, and the business operated on occasion beyond 11:00 p.m. after 2019 April 3.

The Council member inquired if the complaints were similar to past complaints, such as noise and disturbance.

The Chief Licence Inspector confirmed that the complaints were similar.

A Council member noted that the Chief Licence Inspector has the right to reduce business hours and stated that the City continued to receive complaints, and that the Chief Licence Inspector took the initiative to cancel the licence.

The Chief Licence Inspector noted that the City issued two violation notices for operating outside of the permitted hours, and had received two additional complaints in which violations notices were not issued prior to the cancellation of the licence.

The Council member inquired if the Chief Licence Inspector had explained to the business why the hours had been reduced.

The Chief Licence Inspector confirmed that the business was informed.

The Council member inquired if the business owners were made aware that the City was receiving complaints after the permitted hours.

The Chief Licence Inspector confirmed that the business was aware of the complaints as they were issued a violation notice.

With no further questions from Council, the Chief Licence Inspector, the RCMP member, and the Environmental Officer were dismissed from the presentation desk.

Mayor Hurley requested the business owner and representatives come forward to the presentation desk, and asked Council if they had any questions for the business representatives.

A member of Council referenced the submission by the business and the statement that the business appreciates that the City has a role in ensuring the health and safety of the community and that the decision to cancel the business licence does not further that purpose. In regard to the safety, the business licence permits occupancy at 30 people, yet on several occasions the occupancy was greater than the permitted occupancy, including reports of occupancy at 45, 50-60, and as many as 90 people present. The member of Council believed this to be a flaunting of the bylaw, and the occurrences of the business operating beyond 11:00 p.m. after the hours were reduced on 2019 April 3. The Council member is concerned about the safety of patrons when the occupancy is beyond the permitted occupancy, and that the safety risk is greater because there is charcoal and fire issues that heighten the safety concern. Even after repeated warnings the business continued to operation and have occupancy levels beyond what is permitted or safe. The Council member stated that the business continued to break the rules after it has been brought to their attention that they are not supposed to operate that way.

Mr. Davidson did not find the points raised by the member of Council unreasonable; however, the City did not ticket the business based on occupancy. The business owners made an effort to get the occupancy numbers down to a reasonable amount and were somewhat successful. There was a breakdown in trust and communication when the business owner was being told inaccurate information, specifically that they were breaching the bylaw due to noise. Section 4(a) of the Noise or Sound Abatement Bylaw should specify a decibel level. If the business is successful in having the decision of the Chief Licence Inspector overturned the business would focus on following all of the laws or the City would be able to shut them down again.

Mr. J. Singh, addressed Council and stated that when the RCMP visited the business after the licence had been cancelled, all four times the occupants included family members of the business owners that were cleaning the equipment. Mr. Jose Singh stated they were open, and were not closed, but that there were not many people there, and those who were there were family and not customers. No one can stop the family members from going to the business, they have to go in to clean the hookahs, floors and tables. The speaker stated the RCMP responded to noise complaints after the business was shut down, and questioned what caused the complaints as there was no noise and no people, and believes people are complaining against the business for no reason.

Mr. J. Singh continued, regarding the 30 person occupancy limit, and stated that any time the RCMP came to them and did a physical count and the business was over occupancy, Mr. J. Singh made sure that all the customers were out and tried to limit the occupancy. The business does not currently have a bouncer, but going forward will hire a bouncer to ensure appropriate occupancy levels. The business did not expect to be so busy and recognized they are a small establishment, but is a culturally alive place. Security will have an occupancy clicker to ensure occupancy is in line with the licence.

A Council member referenced Section 4(a) of the Noise or Sound Abatement Bylaw, and stated that the more people you have the louder the noise is, this is increased when people are kept in line outside, as they also produce noise causing an inconvenience and disturbance to the neighbourhood.

A Council member referred to advertising by the business that stated business hours until 4 am on Saturday night.

The business confirmed that they are open those hours.

With no further questions from Council, the business representatives were dismissed from the presentation desk.

Mayor Hurley stated that the question before Council is if there was reasonable cause to cancel the business licence.

MOVED BY COUNCILLOR JOHNSTON
SECONDED BY COUNCILLOR JORDAN

THAT Council uphold the Chief Licence Inspector's decision to cancel the business licence for Pure Hookah Lounge Inc. to operate at 3863 Hastings Street.

A Council member stated that the Chief Licence Inspector was within his right to exercise his responsibility to make sure there is reasonable peace and quiet in that

area of the neighbourhood by reducing the hours. The member of Council stated that after the hours were reduced on 2019 April 3 that a violation notice was issued to the business in May, for operating at 1:30 a.m. The Council member stated that he believed the Chief Licence Inspector had enough reason to cancel the licence, and was correct in doing so.

Another member of Council also stated his support for the Chief Licence Inspector's decision to cancel the licence, as the report outlines the defiant practices of the business operators that disregarded the conditions and restrictions placed on their business by the City.

With no further questions from Council, the original motion was then put.

THAT Council uphold the Chief Licence Inspector's decision to cancel the business licence for Pure Hookah Lounge Inc. to operate at 3863 Hastings Street.

CARRIED UNANIMOUSLY

5. ADJOURNMENT

MOVED BY COUNCILLOR JORDAN
SECONDED BY COUNCILLOR KEITHLEY

THAT this Special Open Council meeting – Reconsideration Hearing do now adjourn.

CARRIED UNANIMOUSLY

The Special Open Council meeting – Reconsideration Hearing adjourned at 7:19 p.m.

Confirmed:

Certified Correct:

MAYOR

CITY CLERK