



SPECIAL RECONSIDERATION HEARING M I N U T E S

**Monday, June 8, 2020, 3:00 p.m.
Council Chamber, City Hall
4949 Canada Way, Burnaby, BC**

PRESENT: His Worship, Mayor Mike Hurley
Councillor Pietro Calendino
Councillor Dan Johnston (*participated electronically*)
Councillor Colleen Jordan (*participated electronically*)
Councillor Joe Keithley
Councillor James Wang

ABSENT: Councillor Sav Dhaliwal
Councillor Paul McDonell (*due to illness*)
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
Ms. Kate O'Connell, City Clerk
Ms. Blanka Zeinabova, Deputy City Clerk

1. CALL TO ORDER

His Worship, Mayor Mike Hurley, called the Special Open Council meeting – Reconsideration Hearing to order at 3:02 p.m. and concluded the roll call. Councillors Johnston and Jordan participated electronically. For the benefit of Council members participating electronically, Mayor Hurley reviewed staff members present at the meeting.

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

2. REQUEST

2.1 Michael Golden Law Corporation - Re: Dahlak Restaurant Ltd. Operating at 7868 Edmonds Street, Burnaby, BC

Mr. Michael Golden, Michael Golden Law Corporation, submitted a request, on behalf of his client, Mr. Amanuel Mihretab, the owner of Dahlak Restaurant Ltd., appealing the Chief Licence Inspector's decision to cancel the Burnaby Business Licence.

His Worship, Mayor Hurley advised that the purpose of the Reconsideration Hearing is for Council to review the reasons of the Chief Licence Inspector that lead to the business licence cancellation; give the business owner an opportunity to provide information and submissions to Council in respect to the reasons for the Chief Licence Inspector's decision; and for Council to make final decision about the business licence cancellation.

3. MANAGER'S REPORT

3.1 DAHLAK RESTAURANT LTD. LOCATED AT 7868 EDMONDS STREET BURNABY

The City Manager submitted a report from the Chief Licence Inspector providing Council with information on the cancellation of the Burnaby Business Licence issued to Dahlak Restaurant Ltd.

Mayor Hurley called upon Mr. Dan Layng, the Chief Licence Inspector, to present the report to Council.

The Chief Licence Inspector summarized the report noting that the business licence for Dahlak Restaurant Ltd. located at 7868 Edmonds Street, has been cancelled due to a failure to comply with the Public Health Order issued on 2020 March 20, and the violation of the Order is in violation of:

Section 11.8 of the *Burnaby Business Licence Bylaw 2017*,

“every holder of a business licence shall comply at all times with every City bylaw or enactment of the Province or Canada or other government authority in respect to the business and the business premises noted in the business licence”.

The speaker noted that due to the COVID-19 pandemic, the Public Health Officer issued a Public Health Order on Friday, 2020 March 20, placing the restrictions on all restaurants operating within the Province. Restaurants could remain open subject to the following conditions:

- only take out or delivery service are provided;
- customers may be on the premises only for the period of 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 two meters from one another; and
- no more than 50 people may be on the premises at any given time.

The Chief Licence Inspector advised that on Wednesday, 2020 March 25, the Licence Office received a complaint from a member of the public alleging that Dahlak Restaurant was continuing to operate in contravention of the Public Health Order - hosting gatherings on site and conducting business in contravention of the Order. As a result of the complaint, on Thursday, 2020 March 26, and in effort to ensure that the business is fully aware of the responsibilities of the Public Health Order, staff contacted the owner of Dahlak Restaurant, Mr. Amanuel Mihretab Kidan, by phone and advised him about the complaint and cautioned against violating the Public Health Order. After the phone conversation, an email was then sent to the owner summarizing their conversation (Attachment #2 of the report).

The following Monday, 2020 March 30, the Licence Office received notification from the RCMP that they had attended the business on Saturday, 2020 March 28 at approximately 4:15 p.m., after receiving a public complaint claiming that a large number of people had gathered at the restaurant for two (2) consecutive days. The RCMP advised the Licence Office that when they initially attended the restaurant, the business appeared to be closed, the open sign was off, and the front door was locked. One of the attending officers was able to look inside the restaurant and saw multiple individuals. The officer identified himself and requested that the door be opened, the individuals inside (estimated 20 – 25 people) ran out the back door and into the alley. When the RCMP gained entry, they found food and beverages (tea) were being prepared, served and consumed on site, there was evidence of a card game taking place and seating arranged as such as individuals would be sitting shoulder to shoulder, contrary to the Public Health Order. The RCMP provided a report (Attachment #6 of the report). The RCMP representatives are present and can speak to what was observed during their attendance.

On the same day, Monday, 2020 March 30, after receiving the information from the RCMP, Licence Office staff spoke with staff from the Fraser Health Authority (FHA) to discuss the situation. The FHA advised the City that a Closure Order will be issued to Dahlak Restaurant that day as a result of the activities observed by the RCMP (Attachment #3 of the report). In consultation with the FHA, it was decided that the Burnaby Business Licence for Dahlak Restaurant would also be cancelled due to contravention of Section 11.8 of the *Burnaby Business Licence Bylaw*. A letter outlining the actions was served to the business owner on that day.

In conclusion, the Chief Licence Inspector noted that the decision to cancel the business licence was based on the forth coming information, and the Chief Licence

Inspector made the decision to cancel the business licence on the belief that reasonable cause existed to warrant the cancellation of the business licence.

A member of Council inquired how many complaints were received by the City alleging the business was violating the health order.

The Chief Licence Inspector advised that the City's Licence Office received one complaint on Wednesday from a member of the public, and the RCMP received a complaint on Saturday (to which they responded) and provided information to the City regarding their observations that was relayed to the City. The speaker is not sure who issued the complaint to the RCMP on Saturday.

A member of Council inquired if the owner understood violations.

The Chief Licence Inspector advised Council that the owner understood he was in violation of the Public Health Order.

A member of Council inquired regarding the complaint to the RCMP was on the same day as the City's complaint.

The Chief Licence Inspector advised that the City received a complaint on Wednesday, March 25, and RCMP received a complaint on Saturday, March 28.

There were no further questions from Council at this time.

The Chief Licence Inspector's statement concluded and he returned to the gallery.

4. APPELLANT SUBMISSION

4.1 Michael Golden Law Corporation, Counsel for Dahlak Restaurant Ltd. - Re: Reconsideration Hearing Submission

Counsel for Dahlak Restaurant Ltd. provided a written submission that included Statutory Declaration of Amanuel Mihretab sworn the 22nd day of May 2020, and copies of four (4) videos of the premises at 7868 Edmonds Street.

His Worship, Mayor Mike Hurley, called Mr. Michael Golden, Legal Counsel and accompanying business representatives to the presentation desk to present their appeal to Council.

Mr. Michael Golden, Legal Counsel, began by playing video evidence – four (4) videos were presented from Saturday, March 28:

- video #1 – showed surveillance from outside the business - two (2) officers arrived at the business, and the front door was locked
- video #2 & #3 – showed surveillance from inside the premises – chairs are on top of the tables, people are running out the back door, the owner is on the phone

- Mr. Golden requested to replay these two videos and pointed out that there is less than 20 people
- video #4 – showed the restaurant from the opposite direction, red sofa and tables, and the back room
 - Mr. Golden requested to replay the video, pointing to the red sofa

Mr. Golden asked Mr. Amanuel Mihretab (owner) to come to the delegation table.

Mr. Amanuel Mihretab Kidan, owner, advised that he opened his business last year to support his family. The speaker advised there was only one complaint. He received an email from the City on Thursday, March 26. A City employee called him regarding people gathering in the restaurant, but he told the City that there are no people in the restaurant and he is planning to close his business on Saturday, as due to the COVID-19 pandemic as he is unable to pay the rent. Mr. Mihretab stated that he advised the landlord of the situation, and Mr. Mihretab came to the restaurant on Saturday to clean up for the closure. The front door was closed, and there were two (2) friends who came to the restaurant to pick up food. His friends usually come through the back door. He was on the phone with DoorDash and he didn't see anyone. His brother was cooking in the kitchen. He didn't see what happened when people were running out. When the RCMP arrived, there were only five (5) people waiting for their takeout food order. Mr. Mihretab noted that after he closed on Saturday, did not operate on Sunday and on Monday found the closure notice. Mr. Mihretab called the City but the call was not return. Mr. Mihretab said that when people come through the back door, they usually sit on the red couch, while waiting for the takeout food order. In addition, the speaker advised that the whole week, the chairs were on the tables. Mr. Mihretab further noted that the business is his sole source of income.

A member of Council inquired if Mr. Mihretab read the Public Health Officer's Order including the conditions that need to be met.

Mr. Mihretab confirmed that he had read the Order, and since March 20, the chairs were on the tables. He was on the phone with DoorDash. People were there only to pick up food orders.

A member of Council inquired if his business was open between March 20 and March 26.

Mr. Mihretab advised he was open for deliveries only, but it was very slow and he decided to close the business after Saturday.

A member of Council inquired regarding the number of people the RCMP reported seeing in the restaurant.

Mr. Mihretab advised that a total seven (7) people were in the restaurant – himself, his brother cooking and five (5) people were waiting for their orders.

There were some people in the parking lot outside when police arrived. The five (5) people in the restaurant are from his community and he knows them.

A member of Council inquired as to where people were sitting in the restaurant.

Mr. Mihretab stated there were people sitting on a red couch and at an adjacent table.

A member of Council inquired if people in the restaurant were two (2) meters apart.

Mr. Mihretab noted that he was on the phone and couldn't tell.

A member of Council inquired why people ran out when the RCMP arrived, if they are legitimate customers.

Mr. Mihretab advised he does not know, maybe they were nervous when they saw the RCMP.

A member of Council requested to play second and third video one more time, and inquired why the surveillance video is shaky like someone is holding it, and inquired if the video was edited.

Mr. Mihretab advised he did not know how to upload or transfer the video clip, and recorded the video with his phone while it was playing on the computer screen.

A member of Council sought clarification regarding take-outs and if only back door was open.

Mr. Mihretab advised that day he came to the restaurant to clean up and close, but people didn't know he will be closing, and regular customers came through the back door and ordered take-out.

Mr. Mihretab statement concluded and he returned to the gallery.

Mr. Golden called **Mr. Samuel Tsehay Tesfazgai and Mr. Faniel Habtemichael, translator,** to the delegation table.

Through the translator, Mr. Golden asked Mr. Tesfazgai where he was living on March 28 and what he did that day.

Mr. Tesfazgai said he was living on Walker Avenue, Burnaby, with his friend. On Saturday, March 28 he went to Dahlak Restaurant with his friend Simon to get food because they do not cook at home. They were planning to eat at home and ordered food for three (3) people.

Mr. Golden, through the translator, asked if Mr. Tesfazgai ate at Dahlak Restaurant.

Mr. Tesfazgai replied they were planning to eat there on Friday, but the restaurant was closed so they took the food home.

Mr. Golden asked if he was at the restaurant on Thursday, when the RCMP arrived.

Mr. Tesfazgai replied he was inside with friends, but they had to go outside when the police arrived. The police told them they have to go out so they left and he was the last one to leave.

A member of Council requested clarification from Mr. Tesfazgai – was he was sitting at the table and waiting for the food when the police arrived.

Mr. Tesfazgai replied they were inside, and when the police came, they ordered them to go outside.

A member of Council inquired if he saw people running out of the business when the police arrived.

Mr. Tesfazgai advised that there were only five (5) people in the restaurant and he didn't see other people. There were about three (3) to four (4) people who came to the restaurant before him.

A member of Council inquired how many other people came into the restaurant when he was waiting for his food order, and how long did he wait.

Mr. Tesfazgai advised he didn't see other people, and he waited about half an hour.

Mr. Tesfazgai statement concluded and he returned to the gallery.

Mr. Golden called **Mr. Mehari Debessay and Mr. Faniel Habtemichael, translator,** to a delegation table.

Through the translator, Mr. Golden asked Mr. Debessay where he was living on March 28 and what he did that day.

Mr. Debessay said he was living on Elwell Street, Burnaby. He went to Dahlak Restaurant as he usually goes there. He was there when the police arrived. He went to the restaurant with a friend named John to eat, but he didn't know the restaurant was closed. When he met the owner, the owner told him the restaurant is closed. There were other people outside. He ordered takeout food for himself and a friend, and he sat opposite to the red couch, his friend stayed outside in the parking lot with other people. He was in the restaurant when the police arrived – first, he didn't see anybody, but people started running, so he thought there was a fire. Then the police came in, and a police officer talked to him at the door asking him why he came to the restaurant.

A member of Council inquired how many people he saw running out.

Mr. Debessay said there was about four (4) to six (6) people, he knows them all, and he was the last one to go out. They were also waiting for food.

A member of Council inquired what they did in the restaurant and if he saw anybody playing cards.

Mr. Debessay replied that he goes there to eat, and they usually play cards, but that day they didn't play cards; however, there were cards on the table.

Mr. Debessay statement concluded and he returned to the gallery.

A member of Council inquired regarding surveillance video time inconsistencies.

Mr. Golden replied he believes it could be a result of daylight saving time.

Council called upon the members of the RCMP for clarification.

Constable Darnell Dyck confirmed the police arrived at the restaurant at 16:17 p.m. (daylight saving time) – according to a dispatch ticket.

Constable Dyck statements concluded and he returned to the gallery.

A member of Council inquired regarding a number of people the RCMP officers observed.

Constable Karan Dulay advised that he looked through the front store window and saw people going in and out. The video evidence shows only a short period of time. Constable Dulay advised he saw people leaving when he was knocking on the door, and he saw about 15 to 20 people in the alley, and some people were running away as well.

Constable Dulay statements concluded and he returned to the gallery.

A member of Council inquired if the restaurant operated on the continuous basis.

The Chief Licence Inspector, advised that as per the 2020 March 25 complaint there was an indication that the restaurant operated on a continuous basis in violation of the Public Health Order.

The Chief Licence Inspector's statements concluded and he returned to the gallery.

A member of Council noted that the business was permitted to operate providing takeout food only.

Mr. Layng confirmed that the statement was correct. Takeout food was permitted under the Health Order.

Arising from discussion, the following motion was introduced:

MOVED BY COUNCILLOR CALENDINO
SECONDED BY COUNCILLOR JOHNSTON

1. 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; and
2. THAT the Special Open Council meeting - Reconsideration Hearing recess at 4:03 p.m. until the conclusion of the Closed portion of the meeting.

CARRIED UNANIMOUSLY

The public, delegation, Chief Licence Inspector, and the RCMP officers left the Council Chamber, and Council conducted the Closed portion of the meeting, from which the public were excluded.

****CLOSED PORTION OF THE MEETING****

Upon the adjournment of the Closed portion of the meeting, the Open portion of the Reconsideration Hearing resumed.

MOVED BY COUNCILLOR JORDAN
SECONDED BY COUNCILLOR WANG

THAT the Special Open Council meeting - Reconsideration Hearing do reconvene at 4:28 p.m.

CARRIED UNANIMOUSLY

The public, delegation, Chief Licence Inspector, and the RCMP officers returned to the Council Chamber.

Council requested the RCMP members provide a summary of their findings.

Constable Dulay advised he was one of the first members on the scene (he can be seen on the surveillance video looking through the window into the establishment). The RCMP received an anonymous complaint that restaurant is operating in contravention of the Public Health Officer's Order. The speaker advised he saw individuals seated around poker-size tables and a red sofa, and when he knocked on the window he could see people were leaving and when he knocked further, people started running. The RCMP members were running around the establishment and when they got to the back parking lot, there were 15 to 20 people outside the establishment, and cars were trying to leave. He stopped one of the cars with four (4) occupants. He could also see another three (3) people running down the alley. Constables Darnell Dyck and Bryan Copp went inside the business, and there were people inside (a cook and the owner), and they were asked to leave the establishment. At that point, the RCMP members observed tea cups on the table, a card game in progress, and food was

being made in the kitchen. It didn't appear to them that people were waiting for food, it appeared they were there to socialize, eat and have some tea.

A member of Council inquired if it was apparent how many people would have been playing cards.

Constable Dulay didn't know how many people were playing cards, but more than three (3) people based on the location of the cards and the tea cup at the table. Constable Dulay circulated photo evidence of tables with card game and tea cups in the restaurant to the Council members and staff.

A member of Council sought further clarification that the cards were not simply left of the table but showed an active game was being played.

Constable Dulay stated he believed the card game to be poker.

A Council member inquired how many people were outside the restaurant.

Constable Dulay advised that 15 – 20 people is his approximate guess. The RCMP didn't identify every individual as lots of people were leaving. At that time the main concern for the RCMP was to identify the main owner and hold him responsible, as that's why they were dispatched to that address.

Mayor Hurley inquired if Council had any questions for the RCMP officer at this time. With no Council members requesting to speak, RCMP Constable Dulay was dismissed from the presentation desk and returned to the gallery.

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 KEITHLEY

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.

AMENDED

A member of Council referred to the the evidence in the Chief Licence Inspector's report and the RCMP's report and stated that the owner may not have been fully aware of the severity of non-compliance with the Provincial Health Order. Recognizing the business owner is supporting a young family, and there may be a lack of understanding of the rules and regulations, an amendment to the recommendation to a suspension.

A member of Council also believes in second chance, and although recognizes the seriousness of the offence, as it was not ongoing, the speaker believes a three month suspension would be satisfactory.

Arising from discussion, the following motion was introduced:

MOVED BY COUNCILLOR CALENDINO
SECONDED BY COUNCILLOR JORDAN

THAT the recommendation of the Chief Licence Inspector be **AMENDED**, to change the cancellation of the business licence for Dahlak Restaurant Ltd. to a six (6) month suspension.

A member of Council spoke in support of the amendment as there was a violation of the bylaw and the Provincial regulations, and does not believe there is enough to justify the full cancellation of the licence and that a six month suspension is appropriate.

A member of Council spoke in support of the amendment, as other restaurants that have complied with the bylaws and Health Order have been closed for three months, and that a six month suspension would reflect a penalty for non-compliance. The speaker affirmed the seriousness of the COVID-19 pandemic and the public's expectation around enforcing public Health Orders and bylaws. The Councillor referred to the video evidence provided, and stated they would have appreciated seeing video taken earlier in the day, and believes the statements of the RCMP that the business was not complying with Provincial Health Orders and City bylaws.

A member of Council spoke in support of the amendment, but recognizes there may have been a misunderstanding. However, the seriousness of the offence is significant in consideration of the Provincial Health Orders. Other businesses were able to comply with the Provincial health orders.

A member of Council spoke to the importance of following Provincial Health Orders and municipal bylaws.

CARRIED UNANIMOUSLY

MOVED BY COUNCILLOR JOHNSTON
SECONDED BY COUNCILLOR KEITHLEY

THAT the motion be approved, **AS AMENDED**.

CARRIED UNANIMOUSLY

5. ADJOURNMENT

Without objection, the Special Open Council meeting - Reconsideration Hearing adjourned at 4:44 p.m.

MAYOR

CITY CLERK