



CITY OF NANAIMO LIQUOR CONTROL STRATEGY

REPORT

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INTRODUCTION

Background:

In 1999, as a result of a comprehensive review of its liquor policy framework, the provincial government began to introduce various changes to the regulations that control the sale of liquor in British Columbia. For much of the past two years, the rate of regulatory change has been quite slow, in large part because of the various transitional issues that follow the election of a new government. In recent months, however, the pace of change has accelerated significantly.

In 2002-AUG, the Solicitor General announced sweeping changes to the province's liquor control framework. Many of these changes, on their own and in combination with others, have important implications for communities and their local governments. City councils, which are important players in the liquor regulatory system, need to be aware of the province's changes and what they mean for individual centres.

In 2002-JUN, the City of Nanaimo retained Neilson-Welch Consulting Inc. (NWCi) to advise the municipality on the implications of the province's regulatory changes for Nanaimo. The City also asked NWCi to take advantage of the opportunity provided by the province's initiative, and explore the broader situation in Nanaimo with respect to the sale of liquor through licensed establishments. The changes announced by the province served to highlight existing issues, particularly in the downtown core, associated with certain types of licensed establishments. The City asked NWCi to examine these issues and identify specific measures to help resolve them.

Liquor Control Strategy:

NWCi's findings and recommendations are presented in this report, which is titled the *City of Nanaimo Liquor Control Strategy*. The report is divided into six chapters.

– Chapter 1 outlines the system for controlling the

sale of liquor in British Columbia. The chapter describes the respective roles and responsibilities of the provincial and municipal governments. The chapter also highlights the key policy and regulatory changes that have been recently introduced by Victoria.

- Chapter 2 discusses the present situation with respect to licensed establishments and the sale of liquor in Nanaimo. Important issues identified through stakeholder interviews and comparative research are reviewed.
- Chapter 3 begins the search for solutions by considering the fundamental role for Council in controlling the sale of liquor. Two options are presented and assessed.
- Chapter 4 turns the discussion from the broad to the specific to determine exactly which measures the City of Nanaimo should consider implementing to address the important community issues. The development of a liquor control strategy for areas outside of the downtown core is the specific focus of Chapter 4.
- Chapter 5 continues with the consideration of specific measures, but changes the geographic focus to Downtown Nanaimo.
- Chapter 6 ends the report by summarizing the key recommendations that, together, comprise the City of Nanaimo liquor control strategy.

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LIQUOR CONTROL IN BC

Introduction:

This chapter outlines the system for controlling the sale of liquor in British Columbia. The chapter begins by describing the respective roles and responsibilities of the provincial and municipal governments. The chapter then highlights the key policy and regulatory changes that have been recently introduced by Victoria. The implications of these changes for municipalities are explained.

Two Levels of Government:

► Provincial

The provincial government has primary regulatory authority over the sale of liquor in BC. The Liquor Control and Licensing Branch (LCLB) of the Ministry of Public Safety and Solicitor General (PSSG) is the vehicle through which the government exercises its authority. On a policy level, the LCLB is involved in the review and development of liquor control policy, as well as the development of liquor control regulations. On an operational level, the Branch is responsible for:

- issuing liquor licenses for the sale of liquor by the glass (to pubs, bars, restaurants, night clubs, etc.)
- issuing licenses for the retailing of liquor through licensee retail stores (commonly referred to as cold beer and wine stores)
- issuing special occasion licenses
- approving and monitoring product advertising
- inspecting and educating licensees to ensure compliance
- where necessary, enforcing compliance
- monitoring the "Serving it Right" program

The legislation under which the LCLB acts is the *Liquor Control and Licensing Act* and *Regulations*.

The distribution, wholesaling and retailing (other than through cold beer and wine stores) of liquor are the responsibilities of the Liquor Distribution Branch, which is also attached to PSSG.

► Municipal

Municipalities are involved both directly and indirectly in controlling the sale of liquor in BC. Under the *Liquor Control and Licensing Act* and *Regulations*, municipal councils enjoy direct involvement through their review of certain types of liquor license applications. Councils have significant discretion in capacity; the LCLB will not, except in extreme circumstances, reject a council's recommendation.

Areas of municipal regulation such as business licensing, zoning, building and public nuisances allow councils to exert indirect control on the sale of liquor. Council may use its business licensing authority in the *Local Government Act*, for example, to regulate a licensed establishment's operations, and to limit the types of establishments permitted in various zones.

Municipal police forces, such as Nanaimo's RCMP, are also involved in the liquor control system. Local police are typically asked by municipal councils for advice in reviewing liquor license applications. Police also work with the LCLB inspectors and liquor license holders to identify and, where possible, strengthen compliance to various regulations.

Provincial Policy Review:

In 1999, the provincial government completed a major review of its liquor control policy. The review was undertaken to:

- reduce the number of regulations and delays faced by applicants for licenses and licence holders
- draw attention to the need for safe and responsible liquor service
- strengthen local involvement in liquor licensing decisions
- promote BC's tourism and hospitality industries

The *Liquor Policy Review* report – commonly referred to as the *Surich Report* after its author –

contained over 130 recommendations, several of which dealt directly with the regulations that govern the licensing and operation of establishments. Upon receiving the *Surich Report*, the LCLB established a series of project teams to study and, ultimately, implement many of the recommendations.

The points below highlight certain changes that have been made already, or that are in the process of being completed. The focus here is on those changes that are deemed particularly important to local governments and the communities they represent. The changes described in the text are summarized in Figure 1.1 on page 5.

► License Classes

At present, there are seven separate liquor license classes for the sale of liquor by the glass. Effective 2002-DEC-02, the seven existing classes will be reduced to two: food primary and liquor primary.

The food primary class will apply to restaurants, dining rooms and cafes where food service is the principal business. These venues, which presently operate under Class 'B' licenses, will be required to serve food with liquor, except in lounge areas (see next point).

Liquor primary licenses apply to all bars, nightclubs, pubs and other venues where the selling of liquor is the principal business. Most of these venues, at present, hold Class 'A', 'C' and 'D' licenses; a small number operate under class 'F' and 'I' permits.

► Lounges

Food primary establishments with a seating capacity of at least 50 persons will be entitled to receive a lounge endorsement, effective 2002-DEC-02. The maximum size of the lounge will be the lesser of 40 persons or 20% of an establishment's person capacity. Municipal councils will not be invited to comment on lounge endorsements.

Prior to the recent announcement of this change, municipalities expected that the province would limit lounge size to the lesser of 20 persons or 10% of a venue's person capacity, and that council approval of new lounges would be required. These conditions, which had been developed through consultation with UBCM, are not reflected in the new regulations.

► Person Capacity

In early 2001, the province implemented the *Surich* report's recommendation to provide existing license holders the opportunity to increase the capacity of their venues by 50%, or to the maximum occupant load, whichever was less. Local government support for increases (in the form of no objection) was required.

Effective 2002-DEC-02, liquor primary license holders will be able to increase the capacity of their venues to the maximum occupant load, period¹. The 50% limit will no longer be applied, which means that an existing venue whose capacity was raised by only 50% in 2001, will automatically be able to increase its capacity to the establishment's occupant load. In addition, license holders will only require local government input in cases where the physical size of the venue is proposed to be altered. In all other cases, local government will not be invited to comment on proposed changes to capacity.

► Hours

Effective 2002-DEC-02, holders of liquor primary licenses will be able to apply to the LCLB to provide liquor service at any time between 9:00 a.m. and 4:00 a.m., seven days per week. At present, the permitted hours of operation for liquor establishments vary based the class of license held. Class 'D' establishments, for example, may remain open until 12:00 a.m. Sunday through Thursday, and 1:00 a.m. on Friday and Saturday. These establishments are also limited by a 14-hour rule, which means that they may not remain open for more than 14 hours per day. Class 'C' establishments must close at 2:00 a.m. and may not open until 7:00 p.m.

Food primary license holders, effective 2002-DEC-02, will also be able to extend liquor service to 4:00 a.m., provided that, during all times of operation, food service remains the principal function.

Under the new regulations, the LCLB will only approve extensions to liquor service hours with the consent of the municipal council. If the local council does not support extended hours, in all or in certain cases, the LCLB will not approve them.

► Licensing Processes

Effective 2002-DEC-02, there will be two licensing processes, one for liquor primary applications, and

one for food primary applications. These two processes will replace the separate processes that exist, at present, for the seven individual classes of license.

Under the new system, local government will be entitled – though not required – to provide a recommendation to the LCLB on all new liquor primary applications. In developing its recommendation, the municipal council will need to take into account a range of considerations, including:

- the location of the establishment
- the proximity of the establishment to social or recreational facilities, and to public buildings
- capacity and hours of liquor service
- the number and type of liquor establishments in close proximity
- traffic, noise, parking and zoning
- population, population density and population trends in the area
- socio-economic information
- the impact on the community if the license is approved

In addition, the council is required, in most cases, to gather the views of nearby residents and consider those views in making its recommendation.

Local government will also be entitled to provide a recommendation on certain aspects of applications for amended liquor licenses, namely:

- the proposed extension of hours beyond 2:00 a.m. (until 4:00 a.m.)
- the proposed increase in capacity, but only where such an increase would require a change to the physical size of the establishment

The LCLB retains final decision-making authority over applications for new and amended liquor primary licenses. The province has stated, however, that the General Manager of the LCLB will not, except in extreme circumstances, overrule a municipal council's recommendation.

With respect to food primary licenses, local government will only be entitled to review those applications which propose liquor service between the hours of 12:00 a.m. and 4:00 a.m., and/or propose to offer patron participant entertainment (e.g., dancing).

► **Licensee Retail Stores (Cold Beer & Wine Stores)**

On 2002-APR-02, all licensee retail stores (LRS) in BC were given permission to sell spirits. Stores were entitled at this time to double their maximum available floor space from 1,000 ft² to 2,000 ft² in order to provide sufficient room for the new products.

On 2002-AUG-12, the province lifted the decade-long moratorium on new LRS in BC. All holders of Class 'A' (in hotels and resorts), 'C', 'D', 'F' and 'I' licenses are now eligible to apply for a licensee retail store (Class 'G') license, provided that the proposed store is located on the same property as the existing establishment. The lifting of the moratorium, it should be noted, appears to be temporary in nature. Existing liquor license holders have until 2002-NOV-29 to apply for a LRS license. At that time, the moratorium on new stores will, in effect, be reinstated pending further review.

The changes to product range and maximum allowable floor space, and the lifting of the moratorium on new licensee retail stores, were introduced without local government input. Municipal councils also will not be invited to provide input or direction to the LCLB through the application review process for new LRS licenses. Local government discretion over new applications will exist only where applicants for store licenses require changes to municipal zoning.

► **Other Changes**

Effective 2002-DEC-02, licensed establishments will no longer be prohibited from serving free liquor. The caveat to this change is that licensees will not be allowed to employ sales strategies that are likely to promote or encourage over-consumption. (Exactly how this caveat will be enforced is not clear in the regulations, or in the government's various press releases.)

Also effective 2002-DEC-02, licensees will be required to check two pieces of identification for anyone who appears to be under the age of 25. One of the pieces of identification must show a picture of the individual.

► **Changes NOT Included**

The provincial government had been considering a number of other policy and regulatory changes that, it

Figure 1.1
Summary of Changes

Change	Description
License Classes	- reduction in number of license classes from seven to two: liquor primary and food primary
Lounges	- a food primary establishment (restaurant) with a seating capacity of at least 50 persons may open a lounge, the size of which is limited to the lesser of 40 persons or 20% of the establishment's person capacity
Person Capacity	- a liquor primary establishment may automatically increase its person capacity to its maximum occupant load
Hours	- liquor primary license holders may apply to extend hours of liquor service to 4:00 a.m.; local government consent is required - food primary license holders may apply to extend hours of liquor service, with food service, to 4:00 a.m.; local government consent is required
Licensing Processes	- two licensing process: one for liquor primary and one for food primary - local government has effective veto over all liquor primary applications - local government has effective veto over food primary requests for extended liquor service hours, and patron-participant entertainment
Licensee Retail Stores	- moratorium on new LRS has been lifted temporarily; local government involved only where re-zoning required
Other	- licensed establishments no longer prohibited from serving free liquor - two pieces of ID required for patrons

seems, will not be made at this time. One such change concerns "dual licensing" ? i.e., the ability for an establishment to obtain both a food primary and liquor primary license. The province had also considered allowing municipalities to place a one-

year moratorium on various types of applications, including those for licensee retail store licenses. Both of these changes were not included in recent announcements, and are not expected to be introduced in the immediate future.

Observations:

The changes announced by the province are intended to support the Liberal government's "New Era" commitments to reducing "red tape" (i.e., regulations that are perceived to be unnecessary), supporting economic growth in the private sector and stimulating tourism. The changes are also intended to enhance public safety by allowing the LCLB to re-direct resources presently used in administering regulations, to the Branch's licence inspection and enforcement efforts.

In addition to these aims, the changes are designed to make liquor more available to British Columbians. The increased availability of liquor is a source of concern to some, given the serious issues that are associated with certain types of liquor establishments and with liquor consumption (Chapter 2 of the report identifies and discusses these issues).

One goal of the province's liquor policy review was to strengthen the role of local government in the liquor control and licensing system. Indeed, through its various press releases, PSSG has drawn considerable attention to the enhanced role of local government under the new changes. As the following points indicate, however, the degree to which the role of local government has been enhanced is somewhat questionable:

- The new regulations will require the LCLB to send all applications for liquor primary licenses to municipalities for review. This requirement, though not currently legislated, has been in effect for some time. By provincial policy, the LCLB requires all applications for Classes 'A', 'C', 'D', 'E', 'F' and 'T' licenses (i.e., all licenses that will fall into the new liquor primary class) to be subjected to local government review.
- The effective veto that municipal councils will possess through the new liquor licensing process exists today. The number of local government recommendations, province-wide, that the LCLB has rejected in recent years is negligible.
- In its press release of 2002-MAR-15, PSSG noted that local governments would be required to

approve the lifting of the moratorium on new licensee retail stores. Further, in the event of the moratorium being lifted, municipal councils would work with the LCLB in reviewing individual applications for new retail operations. The regulations that took effect on 2002-AUG-12 provide no such roles for local councils.

- New regulations that will automatically allow establishments to increase their person capacities will render meaningless the capacity reviews undertaken by municipal councils in 2001.

Enhancements to the powers of local government under the new liquor regulatory system appear to be quite limited. Council's vetoes over extended hours of liquor service (to 4:00 a.m.) in all licensed establishments, and patron-participation entertainment in food primary establishments, are the most notable exceptions.

Endnotes:

ⁱ There has been some confusion among municipalities over which set of standards to use in calculating an establishment's maximum occupant load. There are two sets available: those found in the *BC Building Code*, and those issued as *Guidelines* by the Office of the Fire Commissioner. The standards from the *Building Code* are less restrictive than those suggested by the Fire Commissioner; as such, the application of the *Building Code* standards would result in higher allowable person capacities.

In 2001, City of Nanaimo staff tackled this issue and developed a compromise standard that was close in impact to, but not quite as strict as, the standards of the Fire Commissioner.

Recently, the consultant spoke with solicitors for the City of New Westminster about this topic. They suggested, based on their research, that municipalities may apply the standards from the Fire Commissioner. If this opinion is correct, then the City's current compromise standard should be above challenge. Indeed, the City may choose to apply the stricter standards from the Commissioner's *Guidelines*.

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THE SITUATION IN NANAIMO

Introduction:

This chapter discusses the present situation with respect to licensed establishments and the sale of liquor in Nanaimo. The chapter begins by outlining the number and variety of licensed establishments and LRS. The text identifies key changes to the numbers that have occurred recently as a result of shifts in provincial liquor policy. Changes that will likely occur in the near future as a result of further provincial policy shifts are also highlighted, as are potential changes that may occur, subject to the position of Council. The chapter ends by reviewing a number of key issues, related to the sale of liquor, that were identified through the community consultation and research efforts undertaken for this report.

Liquor Licenses:

The new streamlined system of liquor licensing, with its two liquor license classes, will take effect on 2002-DEC-02. At that time, all existing liquor licenses will automatically be converted to either a liquor primary or a food primary license.

- Existing Class 'A' (lounge/pub), Class 'C' (cabaret/nightclub) and Class 'D' (neighbourhood pub) licenses will automatically become liquor primary licenses. The less common Class 'E' (public venue), Class 'F' (marine pub) and Class 'I' (restoration pub) will also fall under the liquor primary category.
- Class 'B' (restaurant) licenses will be converted to food primary licenses.
- Class 'G' (LRS) licenses will not exist after 2002-NOV-29 (until further notice); Class 'H' licenses are no longer issued already.

Figure 2.1 gives an overview of the number and types of liquor licensed establishments in Nanaimo today. Data for the table were supplied to City staff from the LCLB.

Figure 2.1
Licensed Establishments in Nanaimo

Type of Establishment	Number
A Lounge/Pub	38
B Restaurant	94
C Cabaret/Nightclub	6
D Neighbourhood Pub	8
E Public Venue	5
F Marine Pub	3
G/H Licensee Retail Store	6
I Restoration Pub	1

► Recent Changes

As noted in Chapter 1, the provincial government's liquor policy review has already resulted in some changes to the regulations which govern the sale of liquor. Most notably, Class 'A', 'C', 'D', 'F' and 'I' establishments (liquor primary) were allowed in 2001 to expand their person capacity by 50% of existing capacity, or maximum occupant load, whichever was less. This change, which required Council's support in order to take effect, resulted in a significant increase in the number of licensed seats within the City. Figure 2.2 shows the capacity increase by establishment.

► Future Changes

Some of the regulatory changes introduced or announced on 2002-AUG-12 will almost certainly, regardless of Council's views, change the current situation with respect to liquor licenses and the sale of liquor in Nanaimo. The specific changes are

**Figure 2.2
Capacity Increases Already Approved**

Establishment (Class)	Former Capacity	Increase	New Capacity
Cambie Hotel (A)	125	24	149
Foundry Pub (A)	125	49	174
Globe Hotel (A)	118	27	145
The Palace (A)	120	60	180
Northgate Inn (A)	125	27	152
Queen's Hotel (A)	157	43	200
Wellington (A)	90	45	135
Total (A)	860	275	1,135
The Metro (C)	279	12	291
Press Room (C)	330	113	443
The Jungle (C)*	350	175	525
44 Commercial (C)	100	148	248
Total (C)	1,059	448	1,507
Black Bear Pub (D)	65	33	98
Harewood Arm (D)	100	44	144
Jingle Pot Pub (D)	65	33	98
Landlubber Pub (D)	65	33	98
Muddy Waters (D)	65	33	98
Windward Pub (D)	65	33	98
Longwood Pub (D)	65	33	98
Millers Landing (D)	65	33	98
Lighthouse Pub (D)	65	10	75
Total (D)	620	285	905

* Based on proposed addition to building

identified in the points that follow:

- *Licensee Retail Stores ?* On 2002-AUG-12, the moratorium on new licensee retail stores was temporarily and unilaterally lifted by the provincial government. At the time of this change, there were six cold beer and wine stores in the City. Staff calculate that there are 26 licensed establishments that could apply for a licensee retail store license before the 2002-NOV-29 deadline. Council will have discretion over 21 of the applications through the re-zoning process. In the remaining five cases, changes to zoning are not required; Council will not have any discretion over these cases.
- *Person Capacity ?* Figure 2.2 showed the capacity increases that were approved by Council in late 2001 and early 2002. It is worth noting that a total of 20 establishments applied for increases under the earlier rules. Ten of these establishments were restricted by the 50% ceiling in making their requests. These ten establishments will be able to surpass this

restriction an increase capacities to their maximum allowable occupant loads starting 2002-DEC-02.

- *Lounges ?* Within the City of Nanaimo, there are over 70 licensed restaurants and dining rooms that will automatically, without Council input, be entitled to operate a lounge in which patrons may consume liquor without food service. These lounges, which will be allowed to open on 2002-DEC-02, will be restricted in size to the lesser of 40 persons or 20% of the individual establishment's seating capacity.

► Potential Changes

The province's decision to allow extended hours for liquor service has the potential to significantly change the current situation in Nanaimo with respect to the sale of liquor. This regulatory change, which goes into effect on 2002-DEC-02, will provide an opportunity for all liquor primary license holders to apply to extend their liquor service hours to 4:00 a.m. Food primary licensees will be able to apply for the same liquor service hours, as long as food service remains predominant at all times.

The possible extension of liquor service hours is the major area of decision-making authority that the province has effectively delegated to Council. The position of Council with respect to applications for longer hours, therefore, will ultimately determine the extent of change to existing times of liquor service.

Council's position on the matter will be of most interest to owners of the Class 'C' (nightclub) and certain Class 'A' (lounge/pub) establishments. The patrons that frequent these types of venues are likely the only customers who would actually make use of the extended hours.

Issues in Nanaimo:

Several stakeholders were consulted in an effort to better understand and assess some of the key issues with respect to licensed establishments and the sale of liquor in Nanaimo. Included in the list of groups interviewed are the following interests:

- RCMP
- City staff
- Downtown Nanaimo Partnership
- Working Group on Downtown Social Issues
- Nanaimo City Centre Association

- Social Planning Advisory Committee
- Greater Nanaimo Chamber of Commerce
- Nanaimo Alcohol and Drug Action Committee
- Hospitality Industry Liquor Licensing Advisory Committee (HILLAC)

In addition to meeting with the local HILLAC group, attempts were made to interview representatives of local nightclubs. Specifically, requests for interviews were made to representatives of two separate nightclub establishments. Unfortunately, the attempts to arrange these interviews were unsuccessful.

The consultations revealed a number of important issues related both to the existing situation in Nanaimo, and to future developments that will, or may, occur as a result of the province's announced changes. Many if not all of the issues are inter-related in some way. Background research was undertaken to assess and, in certain cases, challenge the various points raised. Much of the research was comparative in nature, in that it focused on experiences in other jurisdictions throughout the English-speaking world, particularly in Canada, the UK, Australia and New Zealand.

The key issues identified include:

- public disorder
- perception of Downtown Nanaimo
- "dead zones"
- incompatible land uses
- the market-led destruction of diversity
- nightclub businesses
- demands on the RCMP
- alcohol-related social problems
- community acceptance of drinking and uncivil behaviour

Each of these issues is discussed in greater detail in the text that follows.

► **Public Disorder**

Incidents of public disorder, which include noise-making, the gathering of unruly crowds, street fighting and vandalism, are common in Downtown Nanaimo on most weekends. According to the RCMP, the incidents occur when groups of nightclub patrons (19-25 year olds) exit the area's Class 'C' establishments at 2:00 a.m. The precise causes of such incidents are difficult to establish. It seems that a number of factors combine to create the conditions necessary for the uncivil behaviour to occur.

Consider the following points:

- *Excessive Liquor Consumption ?* The excessive consumption of liquor by some patrons of the city's nightclubs is one of the critical conditions for public disorder. Studies have demonstrated that inebriation impairs an individual's cognitive and perceptual functions and, as a result, often prompts aggressive behaviour, particularly among young males.ⁱⁱ
- *Uniform Closing Time ?* Liquor service at the nightclubs in Nanaimo ends at 2:00 a.m. At that time, or shortly thereafter, patrons leave the establishments and enter the streets *en masse*.
- *Concentration ?* Five of the six licensed nightclubs in Nanaimo are concentrated within a tight three-block area of the downtown core. As a result of this concentration, hundreds of patrons typically converge in the streets at closing time on weekends. The crowds often become noisy and otherwise unruly, and become both a stimulus and an audience for the few individuals who are intent on initiating some kind of altercation. The narrowness of the streets in Downtown Nanaimo exacerbates the crowdedness, increases the noise level and magnifies the potential for disturbances.
- *Attitudes ?* A 1992 comparative study conducted in the UKⁱⁱⁱ points to cultural attitudes as a possible contributor to incidents of public disorder. Despite periodic campaigns against alcohol and its abuses, British culture tends to tolerate and in cases, encourage disorderly behaviour in a drinking context. In simple terms, aggressive and/or disorderly behaviour is viewed as a "normal" occurrence after drinking. The same views may persist in Canada where excessive drinking and public disturbance has been tolerated, if not accepted, for years as a normal part of the young adult lifestyle.

The comparative research undertaken for the report reveals that incidents of nightclub-related public disorder are not unique to Downtown Nanaimo. City staff in Kelowna, Kamloops, New Westminster, Vancouver and Ottawa report identical occurrences, and point to the identical contributing factors. Reports from the UK, New Zealand and Australia tell the same story.

► **Perception of Downtown**

The regular incidents of public disorder and the high

concentration of nightclubs and bars contribute to the perception of Downtown Nanaimo as an unsafe, unappealing area. This perception, which appears to be widely held, does nothing to encourage residential development, increased tourism or private sector investment in the core.

Economic development staff at the City and members of the downtown business community can cite several examples of new businesses that have avoided downtown locations, as well as existing businesses that have left the core for what are considered to be safer, more stable environs. A recent survey of international students at Malaspina University College highlighted the students' perception of downtown as an unsafe area.^{iv} This perception explains, to a large degree, the students' reluctance to spend time, or consider living, in Downtown Nanaimo.

Organizations such as the Nanaimo City Centre Association and the Downtown Nanaimo Partnership are working in partnership with City Hall on various efforts aimed at improving the image of downtown. The continuing disturbances and other problems associated with downtown liquor establishments frustrate the efforts of these groups.

➤ **Dead Zones**

It may be argued that certain types of licensed establishments contribute in positive ways to a city centre's economic and social development by helping to create vibrant, urban streetscapes. In areas of Victoria (e.g., Wharf Street), Vancouver (e.g., Yaletown, Kitsilano) and Ottawa (e.g., Byward Market), licensed restaurants, cafes, bistros and pubs serve to enhance the aesthetics and attractiveness of their host neighbourhoods.

Nightclubs have a much different impact on streetscapes. Indeed, nightclubs tend to create urban dead zones, especially when concentrated in a tight area. With their late opening hours and windowless building designs, nightclubs discourage any street activity during the daytime and early evening. In Nanaimo's case, the lack of street activity, in turn, strengthens the perception that Downtown is unappealing and/or unsafe.

➤ **Incompatible Land Uses**

In recent years, Nanaimo City Council has invested heavily in efforts to attract new residential

development to the City's downtown core. Council's investment, unfortunately, has been undermined by the persistent public disturbances associated with nightclub patrons. The significant noise and crowds that are common on weekend nights in Downtown Nanaimo put great strain on the area's residents. In their current form, the city's nightclubs are not compatible with residential development.

This issue promises to take on a greater profile after 2002-DEC-02 when Council is asked to deal with requests by nightclub owners to remain open until 4:00 a.m., and when certain establishments expand their person capacities to meet maximum occupant loads. At that time, Council may also be asked by some restaurant owners to approve extensions to liquor service hours and to approve patron-participant entertainment. Concerns may arise where these restaurants are located in close proximity to established residential areas.

➤ **Market-led Destruction of Diversity**

The term "market-led destruction of diversity" first appeared in the UK in discussions on efforts by senior governments to streamline the number of liquor license categories.^v The concern highlighted by observers was that different types of licensed establishments would, in a streamlined licensing environment, be able to radically change the nature of their operations to cater to shifting market demand. An establishment that may have been permitted as a neighbourhood pub under an earlier regulatory system, for example, would be free under the new streamlined system to re-create itself as a strip bar or nightclub in order to capture a share of a more lucrative market. The community in which the establishment was located would be left to deal with the social and economic impacts associated with the change.

Concerns about a possible "market-led destruction of diversity" have been alluded to by various stakeholders in Nanaimo. Under the present regulatory system, converting a license from one class to another can be an onerous process that requires, among other approvals, the consent of Council. Under the new system (effective 2002-DEC-02), it will conceivably be easier for licensed establishments to make significant changes in their types of operations in order to better accommodate particular markets. All licensed establishments will hold liquor primary licenses, and will, as such, be subject to the same broad provincial requirements.

It should be noted, however, that even under the restrictive current system, licensed establishments enjoy a certain degree of flexibility over operations within their specific classes of license. In some cases, the flexibility is probably sufficient to change the fundamental nature of the establishment. Under the *Liquor Control and Licensing Act* and *Regulations* all liquor licensed establishments may provide entertainment. Subject to local government zoning and business license regulations, this entertainment may include adult varieties. A neighbourhood pub today, therefore, is able to essentially convert to a strip bar.

The province's new regulatory framework, effective 2002-DEC-02, will not introduce completely new possibilities for conversion that have not existed to date. It may, however, serve to highlight the possibilities in a way that the current system has not.

➤ **Nightclub Businesses**

As suggested earlier, incidents of public disorder in Nanaimo are primarily associated with the city's nightclub scene. The nightclubs themselves, it would appear, do very little to help the situation. Indeed, some of the establishments' actions serve only to compound the problems. Consider the following examples:

- In an effort to gain market share, the city's nightclubs offer "cheap drink" promotions that are designed solely to encourage patrons to over-drink to the point of intoxication.
- The clubs are loath to take any responsibility for the behaviour of their patrons once they leave the establishment's property. The attitude seems to be one of "it's not our problem".
- There is no evidence that individuals with a history of causing disturbances are denied entry into nightclubs (a practice which is common in some other centres, particularly within the UK).

In addition to these points, it is worth noting that nightclub representatives appear to have no involvement with HILLAC or with downtown business groups such as the NCCA. This lack of involvement speaks to a complaint, heard several times during interviews with stakeholders, that the nightclubs are simply not interested in working with the community to identify and resolve issues.

➤ **Demands on the RCMP**

On most weekends, the RCMP is required to dedicate the bulk of its on-duty resources to deal with the public disturbances that occur outside of the various nightclubs in the downtown core. Members are forced to leave other parts of the City to help disperse the 2:00 a.m. crowds of nightclub patrons, control the street fights that tend to occur, and prevent the damage or destruction of local businesses and public property. In some instances, police are simply on-hand to "baby-sit" the party-goers. The Superintendent of the Nanaimo RCMP Detachment reports that an inordinate amount of police resources is being used to deal with the very small group of citizens that frequents the local clubs.

The financial cost to taxpayers associated with policing the nightclub scene is surely great. To date, the Detachment has been able to avoid incurring overtime charges, but only by re-directing resources from other parts of the City to assist in controlling the downtown disturbances. Property owners outside of the core, in other words, are forced to subsidize the nightclub scene's demand for police services.

The RCMP is concerned about the prospect of extended liquor service (to 4:00 a.m.). Extended hours would, in the view of the police, require members to be on-hand in the downtown core for longer periods of time in the early morning hours on most weekends. The extra time on the street would prevent members from completing their other tasks which, in turn, would ultimately result in significant overtime.

It is interesting to note that the police who attend public disturbances in Downtown Nanaimo are placed in a classic "catch 22" situation. The need to protect persons and property requires the members to be present. Their very presence, however, may also serve to trigger the uncivil behaviour they seek to prevent. More specifically, the few individuals who are intent on creating public disturbances may be encouraged by the presence of police (authority) and large crowds (audiences). Police in Nanaimo are aware of this paradox and are constantly experimenting with new crowd management techniques designed to diffuse, rather than compound, tense situations.

➤ **Alcohol-Related Social Problems**

Members of the Nanaimo Alcohol and Drug Action Committee draw attention to the strong correlation

between alcohol consumption and certain social problems in Nanaimo. The Provincial Health Officer, in a 2002-MAY report^{vi}, highlights the same finding for the province as a whole. The range of problems includes:

- *Family Violence* ? The Provincial Health Officer reports that half of the 5,000 spousal abuse incidents reported in BC in 2000 were alcohol-related.
- *Fetal Alcohol Syndrome (FAS)* ? Estimates suggest that approximately 300 children are born in BC each year, outside of First Nations communities, with full FAS.
- *Child Deaths* ? A review of 558 child fatalities in a 2001 report by the province's Children's Commissioner^{vii} implicates alcohol as a major factor in many of the cases.
- *Traffic Collisions* ? Absolute numbers of alcohol-related traffic accidents and deaths have been falling in recent years, either because of improved safety records and/or a decline in police reporting. In 1999, 2,228 alcohol-related collisions were recorded, in which 3,407 persons were injured, and 96 persons died.
- *Alcohol-Related Deaths* ? The provincial government estimates that, overall, 1,689 British Columbians died as a result of alcohol consumption in 2000. This figure has remained constant over the past decade.

The literature on alcohol consumption patterns concludes that there is a positive relationship between alcohol availability and alcohol consumption. In other words, an increase in the availability of liquor – which will result from the province's announced regulatory changes – will lead to an increase in alcohol consumption. An increase in alcohol consumption, in turn, will invariably lead to an increase in alcohol-related social problems, such as the ones outlined above.

➤ **Community Acceptance**

Some stakeholders make the argument that efforts to increase the availability of liquor will serve to make the consumption of alcohol more socially acceptable, particularly among youths. The extension to this argument is that the community's continued tolerance of the public disorder associated with the nightclub scene serves to legitimize, to a certain degree, the

uncivil behaviour that is common in the downtown core on most weekends.

Addressing the Issues:

This chapter has reviewed several important issues that were identified through consultations with stakeholder groups, and through comparative research on experiences in other jurisdictions. Some of the issues impact – or may impact – all areas of the municipality; most of the issues, however, are of particular importance to Downtown Nanaimo.

The remainder of the report focuses on what the City of Nanaimo can do to address the issues presented here.

Endnotes:

- ii See, for example, P. Marsh and K. Fox (MCM Research and Social Issues Research Centre – UK): *Drinking and Public Disorder*, 1992, Chapter 4
- iii *Ibid.*, Chapters 5 and 6
- iv S. Huang: *Market Research Report*, International Student Services, Malaspina University-College, 2001
- v P. Hadfield, D. Hobbs, S. Lister and S. Winlow: "The 24-Hour City" Condition Critical", in *Alcohol Alert*, 2002, Issue 1
- vi Provincial Health Officer (BC): *Public Health Approach to Alcohol Policy: A Report of the Provincial Health Officer*, 2002
- vii BC Children's Commissioner: *The Role of Alcohol in the Lives and Deaths of Children and Youth in British Columbia*, 2001

3

THE ROLE OF COUNCIL

Introduction:

The issues reviewed in Chapter 2 are wide-ranging; no one course of action by Council will resolve all of them. Council will need to consider a multi-faceted strategy that contains a variety of measures.

Before identifying and assessing the individual measures available, it is useful to consider a more important question related to Council's fundamental role the liquor control framework. Specifically:

- To what extent should Council be involved in controlling the sale of liquor in the community?

The answer to this question will set the stage for the study of individual courses of action. It will help Council narrow its focus to the types of measures that are consistent with its fundamental outlook.

Fundamental Role:

Council has two basic choices – both of which are legitimate – to consider in determining its fundamental role in the liquor control framework. Council can choose to take a "hands-off" approach to liquor control, in the belief that either the province and/or the market are more effective mechanisms for resolving issues. Alternatively, Council can choose to adopt a "hands-on" approach, based on the view that the City's intervention is necessary to achieve positive results.

Proponents of the hands-off approach promote the following types of positions:

- Liquor is a standard consumer product, not dissimilar from other products such as shoes, car parts and cameras. From a policy perspective, Council should treat the sale of liquor as it would the sale of these other goods.
- There is no longer (if there ever was) a strong public health, public safety, social or economic rationale to support Council's intervention in the

sale of liquor to the community.

- Controlling the sale of liquor is primarily a provincial matter, not a local government concern.
- In the long run, the market will be more successful than government in resolving any negative impacts associated with the sale and consumption of liquor.
- The economic benefits to the community that may be achieved through the hands-off approach outweigh the economic and social costs that may result.

Advocates of a hands-on role for Council dismiss most of these claims, and offer the following positions:

- Liquor is not a standard consumer product. The sale and consumption of liquor, while innocuous and even beneficial under certain circumstances, has negative social and economic impacts on the community, as illustrated in Chapter 2.
- Governments of all stripes throughout the industrialized world have long recognized the public health, public safety, social and economic rationales for regulating the sale of liquor. These rationales have not changed.
- The provincial government's policy and regulatory changes will lead to an increase in the availability of liquor in communities, but will do little to address the existing and potential negative impacts associated with certain types of liquor establishments. The province has signalled its unwillingness to deal with these impacts; Council must address them.
- The market is a slow and imperfect mechanism for resolving important community issues. In the short run, while waiting for the market to impose its discipline, the community will be forced to tolerate more of the same, in terms of public

disorder and other concerns.

- The economic benefits to the community associated with liquor sales do not apply to all types of liquor establishments. More economic harm (not to mention social harm) than good would result from a hands-off approach.

The hands-off and hands-on approaches are portrayed here, somewhat simplistically, as "black-and-white" options. The reality, of course, is more complex. Decision-makers who believe that the City should, in broad terms, adopt a hands-off approach to the sale of liquor may not agree that Council has no role whatsoever in the liquor control framework. For example, advocates of the hands-off approach would not likely support the removal of all zoning controls that prevent licensed establishments from locating in certain areas of the City. Proponents of a hands-on approach, similarly, would not likely support a regulatory campaign aimed at introducing an outright ban on all nightclubs in Nanaimo.

The hands-off and hands-on approaches do not, to be sure, always stand out as mutually exclusive positions, in stark and constant opposition to one another. They do, however, represent fundamentally different perspectives on the proper role of local government in attempting to control the ways in which liquor is sold in the community. And, as noted at the outset to this chapter, Council's selection of one of the approaches will help the City to focus on the types of actions it wishes to consider taking.

Selecting an Approach:

Which fundamental approach to controlling the sale of liquor should Council select? hands-off or hand-on? The choice is ultimately a political one and, as such, can only be made by Council. In making its decision, however, Council should reflect on some key factors, including:

- the new role of the province in the liquor control framework
- the perceived effectiveness of each approach in addressing the issues raised in Chapter 2
- Council's current priorities and policy positions, particularly with respect to Downtown Nanaimo

Each of these factors is explored in this section of the text.

► Role of the Province

Through the LCLB, the provincial government will remain actively involved in the control of liquor throughout British Columbia, even after all of the recently-announced regulatory changes take effect. The level of provincial government involvement, however, will be less significant than it was before the process of change began. The loosening of restrictions on licensee retail stores, drinking and entertainment in restaurants, the hours of liquor service, and the person capacity of licensed establishments represents a withdrawal by the province from areas of regulation that were, until recently, considered to be important.

In its various press releases, PSSG has offered some explanations for its changes. The Ministry states that:

- British Columbians want greater access to liquor in their communities
- regulations which do not serve any public health or safety purpose have been eliminated in order to reduce "red tape"
- municipal governments should have a greater role in gauging and protecting the local public interest

The third point is particularly significant. It means, in essence, that local governments can no longer rely on the province to anticipate and address issues which may be of concern to local communities. The corollary to this statement is even more significant: if local councils have specific concerns related to the sale of liquor in their communities, then the councils themselves should take action.

► Perceived Effectiveness

Chapter 2 reviewed a series of issues related to the sale of liquor in Nanaimo. Which fundamental approach by Council to controlling the sale of liquor in the community – hands-off, or hands-on – would likely be most effective in addressing the concerns raised?

In adopting a hands-off approach, Council would be leaving the control of liquor to the provincial government and the market. The provincial government's interest in addressing the community issues is, as described already, waning. The market may, in theory and over the long run, resolve specific problems by, for example, displacing the existing

nightclubs with higher-value land uses, or by forcing certain establishments to cater to the demands of different clientele. The problem, however, is that the market works slowly. In the short run, while waiting for the market to exert a degree of discipline, the hands-off approach by Council would likely lead to:

- the proliferation of licensee retail stores
- extended hours of liquor service in nightclubs, bars and certain restaurants
- an increase in the level of liquor-related public disorder in the downtown core

These outcomes would place further pressure on Nanaimo's RCMP Detachment and, in all likelihood, add to the severity of the alcohol-related social problems. The results would also do more harm than good to the economy of Downtown Nanaimo where businesses are already impacted by the public disorder and the widespread, negative perception of the core.

The adoption of a hands-on approach by Council would commit the City to a higher level of intervention in liquor licensing matters and the operations of existing establishments. It is impossible to predict exactly how successful Council's specific actions would be at resolving the various community issues. It would seem logical to predict, however, that, at least in the short run, applying some targeted measures would yield better results than making no effort at all. Put differently, "doing something" would be better than "doing nothing".

► Council's Priorities

The revitalization of Downtown Nanaimo has been Council's top priority. Council considers Downtown Nanaimo to be the heart of the City. Council believes firmly that an economically- and socially-vital city core is essential to the long term health and well-being of the broader community.

Over the past three years, Council has invested substantial resources in the development and implementation of a holistic downtown revitalization strategy. Several themes are promoted in the strategy, including:

- the promotion of economic diversity through the establishment of new businesses, and the strengthening of existing businesses
- the establishment of a significant arts and culture

- presence
- upgrades to basic infrastructure

Essential to the success of the overall strategy, however, is another theme, namely the development of safe, healthy and vibrant residential neighbourhoods in the downtown core. In plain terms, the revitalization of Downtown Nanaimo is dependent on the development of a significant residential component in the city centre. Without such development, meaningful revitalization will not occur.

Council recognizes the critical importance of residential development to the future of Downtown Nanaimo. As part of its revitalization strategy, the City has created various incentive-based programs and has made strategic (sizable) investments targeted at the residential sector. For example, the City has:

- removed DCCs from new residential development in the downtown core
- reduced parking requirements for downtown housing
- established a Downtown Residential Grant Program for heritage buildings
- adopted a Nanaimo Downtown Plan
- committed \$4.6 million of City funds to Nanaimo's Old City Infrastructure Rehabilitation Project (British Columbia and Canada have each contributed an additional \$4.6 million for a total project value of \$14 million)

The problems associated with the city's nightclub scene seriously undermine the efforts of Council to create a vibrant and healthy downtown community. As noted in Chapter 2 of this report, the noise, street crowds and other forms of public disorder links to the clubs and their patrons suggest strongly that the nightclubs, in their present form, are not compatible with downtown housing.

The challenges inherent in attempting to mix these land uses, it is interesting to note, stretch far beyond Nanaimo. City councils in Victoria, Kelowna, Kamloops, Vancouver, Ottawa, London (UK) and elsewhere are grappling with the identical problem. Each of these cities has embraced a development strategy that recognizes the critical importance of residential development to the vitality of the downtown core and, by extension, the city as a whole. Each of these cities has come to realize that nightclubs and residential communities do not easily co-exist.

This realization, of course, is not a major revelation.

The need to separate nightclubs and residential developments has been a tenet of zoning for many years, and was one of the reasons that led to the concentration of nightclubs in city centres, away from established residential neighbourhoods. The problem has come into sharper focus in recent years primarily because of the widespread movement in urban planning that emphasizes the importance of residential development in the city centres.

It is important for all city governments, including the City of Nanaimo, to ensure that their various policy positions are mutually-supportive. Council's key policy of encouraging significant residential development in Downtown Nanaimo would not be supported by a hands-off approach to liquor licensing and the problems associated with nightclubs. Indeed, a hands-off approach that relied on the market to resolve issues would simply pit nightclubs against residential development. The ensuing conflict would, in turn, strongly discourage further housing development from occurring. In essence, Council's decision to become actively engaged in the revitalization of Downtown Nanaimo requires Council to adopt a hands-on approach to liquor control.

4

LIQUOR CONTROL STRATEGY

Introduction:

Chapter 3 emphasized the need for Council to select a fundamental approach to controlling the sale of liquor in the community. The chapter reviewed Council's options, and identified three factors for Council to consider in making its choice:

- the new role of the province in the liquor control framework
- the perceived effectiveness of each approach in addressing the issues raised in Chapter 2
- Council's current priorities and policy positions, particularly with respect to Downtown Nanaimo

The discussion of these factors pointed to the hands-on approach as the suggested choice for Council. The remainder of this report is written on the assumption that Council will choose to participate in controlling the sale of liquor in a proactive, hands-on fashion, particularly with respect to Downtown Nanaimo.

Liquor Control Strategy:

This chapter – Chapter 4 – turns the discussion from the broad to the specific to determine exactly which measures the City of Nanaimo should consider implementing to address the important issues related to the sale of liquor in the community. As illustrated in Chapter 2, the issues affecting the community are numerous and wide-ranging; there is, consequently, no one measure available to Council to address all concerns. Council, instead, will need to consider developing a more holistic liquor control strategy that includes a variety of complementary courses of action.

► Guiding Principles

In developing and implementing a holistic liquor control strategy for Council, it is helpful to embrace

certain guiding principles. Consider the following suggestions:

- *No Panacea ?* There is no one, quick-fix action that will act as a panacea in resolving the liquor-related issues affecting the community. Positive, lasting changes will require a wide array of efforts.
- *Full Range of Tools ?* Council has at its disposal a broad range of tools with which to effect change. Council's various bylaws that govern zoning, noise, public nuisances, business licensing and public safety are examples of such tools. Moral suasion, publicity, incentive-based programs and increased enforcement are others. The soon-to-be-released *Community Charter* may provide Council with an even greater range of options. In crafting and implementing a liquor control strategy, the full range of tools needs to be considered.
- *Civic Responsibility ?* Council must impress upon the nightclubs and other licensed establishments the notion of civic responsibility. Nightclubs and other establishments must understand that they have a duty to operate their businesses in ways that contribute positively to the development of the community. Negative impacts must be acknowledged and addressed.
- *Cooperative Approach ?* The probability of success will be increased if the City works in cooperation with key stakeholder bodies, including the NCCA, HILLAC, NADAC and the licensed establishments themselves. The licensed establishments, in particular, should be invited to help finalize and implement measures.
- *Balance ?* The approaches that Council adopts in its liquor control strategy must take into account a wide range of factors. The health and vitality of the community is, of course, one such factor. The rights and responsibilities of both consumers and establishments are other factors. An additional consideration is the availability, or lack thereof,

of City resources. Approaches that presume the dedication of significant funding are not terribly useful.

A balanced approach to developing a liquor control strategy takes into account all of these types of factors.

- *Vigilance* ? Notwithstanding the need for balance, Council and the community need to be vigilant in embracing and defending the values and vision that the community has identified as critical to its long-term health and vitality. This point is particularly salient with respect to liquor control approaches for Downtown Nanaimo.

► **Two Parts**

The review of issues in Chapter 2 suggested that Downtown Nanaimo should be the focus of most effort and resources. The remainder of the community, however, is not completely devoid of existing or potential problems. In an effort both to give the downtown core the attention it deserves, and to address the problems in the rest of the city, the discussion of a liquor control strategy is broken into two parts. Part I, which considers liquor controls outside of the core, is the focus of this chapter. Part II, which focuses solely on Downtown Nanaimo, is outlined in Chapter 5.

Part I Liquor Control Outside the Core:

The City's liquor control strategy for areas outside of the downtown core should address the following specific issues:

- the number and location of licensee retail stores
- the potential for liquor primary establishments to significantly change their styles of operation
- changes in provincial regulations as they apply to restaurants

Each of these issues is explored separately. Recommended courses of actions are identified.

► **Licensee Retail Stores**

On 2002-AUG-12, the provincial government lifted the decade-long moratorium on licensee retail stores, at least temporarily. Until 2002-NOV-29, holders of Class 'A' license for a hotel or resort, or a Class 'C',

'D', 'F' or 'I' license may obtain a Class 'G' license to open and operate a LRS. If the applicant has a satisfactory history as a liquor license holder, and if the zoning for the proposed establishment allows a licensee retail store, the LCLB must grant a Class 'G' license to the applicant.

As noted in Chapter 2, the City's current zoning bylaw would (subject to an update to the wording of the existing "cold beer & wine store" definition) allow for an additional five licensee retail stores. If each of these five stores were developed, the total number of stores in Nanaimo would almost double to 11.

An additional 21 liquor license holders in Nanaimo are eligible to receive a LRS license, subject to re-zoning. How should Council respond to requests for re-zoning from these 21 potential applicants? Council has three options:

- *Support All Necessary Re-zoning* ? This option would be consistent with a hands-off approach and the view that the market should be allowed to determine, through competition, the ultimate number and location of LRS in Nanaimo. The option does not recognize the existing zoning rationale that attempts to balance access to liquor and protection of residential areas. At present, licensee retail stores are restricted to four commercial zones (the largest being C-7) that are situated in the City's designated Town Centres and, in a few cases, the designated Neighbourhood Villages. On the whole, these zones have been placed at suitable distances from established residential neighbourhoods in order to protect residents from the noise and traffic that are typically generated by LRS operations.

It is also worth noting that if Council chose to support all re-zoning requests, the potential number of stores in Nanaimo would be significant. Price wars, that would not necessarily benefit the broader community, could develop. In an effort to gain market share, the licensee retail stores could engage in bidding wars with each other and with the public outlets (both public outlets and LRS receive a 10% discount from the province on purchases of alcohol for re-sale). Given that the demand for alcohol is price elastic, the lower prices generated by the price war would encourage increased consumption. An increase in the alcohol-related social problems listed in Chapter 2 could very well be the ultimate outcome.

- *Support Specific Re-zonings ?* Council could support specific applications for re-zoning, such as those that are located within other commercial zones in designated Town Centres. In taking this decision, Council would, in essence, be agreeing with the notion that the existing rationale for limiting licensee retail stores to specific commercial zones (primarily C-7) is no longer valid. In certain cases, the rationale may, indeed, not be valid, in particular where it can be shown that the addition of a LRS would have no impact whatsoever on a nearby neighbourhood or school.
- *Support No Re-zonings ?* The province's decision to lift the moratorium on licensee retail stores was made to allow supply (which had been frozen) to match demand (which has allegedly been increasing). The potential increase from six stores to 11 would, it stands to reason, more than match any increase in demand that may have occurred as a result of population growth over the last ten years. The City should, therefore, feel no obligation to loosen zoning restrictions to allow for even more licensee retail stores, especially given the potential negative impacts of such operations on the community.

The second (support specified re-zonings) and third (support no re-zonings) options appear to be the more suitable courses of action for Council to consider. Both of these options promote some balance between access to liquor and protection of community. In determining which course of action to follow, however, Council may wish to consider one additional piece of information, namely the province's recently announced intention to privatize government liquor stores. How exactly this initiative will be implemented is unknown at this time, even within the LCLB. It is conceivable, however, that privatization could, as in other jurisdictions where it has occurred, result in a substantial increase in the number and type of retail businesses licensed to sell liquor.

Until the City has a better sense of how the province intends to implement liquor store privatization, Council should consider limiting any current increase in the number of licensee retail stores.

- *Recommendation:*

THAT Council announce, by resolution, that it will NOT support any re-zonings required to establish additional liquor licensee retail stores.

➤ **Change in Style of Operations**

Chapter 2 cited the term "market-led destruction of diversity" to describe the potential for licensed establishments, grouped together into one license class (liquor primary), to significantly change their styles of operation in an effort to better accommodate specific markets. The potential for such change, as noted earlier, has long existed under the current multi-class system; it is only in response to the province's announced regulatory changes that the potential has attracted greater attention.

In practical terms, the concern applies primarily to neighbourhood pubs and their potential to become a straight bar, or a bar that offers adult entertainment. A neighbourhood pub is recognized as an establishment that enhances the social and aesthetic character of the neighbourhood in which it is located. As expressed in the LCLB's information documents, neighbourhood pubs are "an alternative to the more commercial choices available...". They "are small in size, welcoming to residents in the neighbourhood, and influenced by community values. A neighbourhood pub usually provides hearty pub-style food and maintains high standards of décor."

The threatened loss of neighbourhood pubs in favour of bars or strip clubs may not be a realistic concern in most parts of Nanaimo. As noted, change has been possible for many years but has not occurred. To date, it would seem that the market has preferred neighbourhood pubs to their alternatives. Notwithstanding this history, should Council consider implementing any measures to preclude future changes?

A simple, uncontroversial step would affect the way in which Council gives consent to future liquor primary license applications for neighbourhood pubs. As part of the new licensing process, Council will be required to consider the impact of the proposed establishment on the community, and will be required to gather the views of nearby residents. The proponent could be required to outline his or her vision and plans for the proposed establishment in a presentation to the community. Council's recommendation to support the application could be tied explicitly to the expressed vision and plan. The explicit link would provide grounds for the LCLB to review the liquor license in the event that the supported neighbourhood pub operation was significantly altered at some future point.^{viii}

This measure may address concerns related to new licensees, but would not protect the community from

changes to existing pubs. To prevent against these changes, Council could simply update the definition of "neighbourhood pub" in the City's *Zoning Bylaw*. The current definition of "neighbourhood pub" relies on the existing multi-class licensing system under the *Liquor Control Licensing Act and Regulations*; as such, the definition will be out-dated as of 2002-DEC-02. The City's new definition could highlight the specific characteristics that distinguish neighbourhood pubs from other types of licensed establishments. A proposed definition is as follows:

- A "neighbourhood pub" is licensed as a liquor primary establishment under the *Liquor Control and Licensing Act and Regulations*. A "neighbourhood pub" offers full lunch and dinner menus, complete with hot and cold meals. Forms of patron-participant entertainment are permitted in the establishment. Forms of adult entertainment, including exotic dancing and stripping, are not permitted in any part of the establishment at any time.

The proposed change in definition has merit both as an attempt to retain neighbourhood pubs and as a "house keeping" item, necessary to keep pace with the province's regulatory changes.

- *Recommendations:*

THAT Council tie future recommendations for license approval to the vision and plan outlined by the proponent to the community;

THAT Council adopt the following definition for "neighbourhood pub" in the Zoning Bylaw:

A "neighbourhood pub" is licensed to serve liquor as a liquor primary establishment under the Liquor Control and Licensing Act and Regulations. A "neighbourhood pub" offers full lunch and dinner menus, complete with hot and cold meals. Forms of patron-participant entertainment are permitted in the establishment. Forms of adult entertainment, including exotic dancing and stripping, are not permitted in any part of the establishment at any time.

➤ **Food Primary Establishments**

Effective 2002-DEC-02, restaurants with food primary liquor licenses will be presented with a number of opportunities:

- *Lounges ?* Restaurants with a person capacity of at least 50 will, without Council's approval, be able to open a lounge area equal in size to the lesser of 20% of the establishment's person capacity or 40 persons.

The number of restaurants in Nanaimo that could open such lounges is, at over 70, quite significant. Council could take action to prevent the widespread development of lounges by creating a new permitted use in the *Zoning Bylaw*, and/or a new class of business in the *Business Licensing Bylaw*, titled "restaurants with lounges". These initiatives, which are being pursued in New Westminster, could be tailored to prevent, for example, the establishment of lounges in restaurants outside of the designated Town Centres. The changes could also be designed to impose various conditions on the operation of permitted lounges.

As an alternative to these measures, Council could take the view that far fewer than the 70 eligible restaurants will actually establish lounges (and, indeed, many of those that will take advantage of the opportunity already have *de facto* lounges in operation). Further, Council could accept that the province's changes are very clear in stating that at no time must the restaurant's liquor service eclipse the true purpose of the establishment, which is to serve food. The onus of ensuring that licensed restaurants adhere to the new regulations is on the province, through the LCLB inspectors. Rather than taking action through zoning and business licensing, Council could apply its efforts to monitoring the situation and, where necessary, holding the province accountable for enforcing its regulations.

- *Entertainment ?* Licensed restaurants may receive LCLB permission, with the consent of Council, to offer patron-participant entertainment. The concern voiced by some stakeholders in Nanaimo and elsewhere is that restaurants which are allowed to offer dancing will become *de facto* nightclubs. Such a transformation would, in reality, be unlikely to occur. As mentioned, any entertainment offered in restaurants must not eclipse the primary purpose (serving food) of the establishment. The characteristics of nightclubs – loud music, dark interiors, light shows, large standing crowds – would be almost impossible to recreate in any marketable way in a food primary licensed area.

In an effort to pre-empt any potential problems,

Council could take preventative measures through its *Noise Bylaw*, *Zoning Bylaw* or *Business License Bylaw*. Alternatively, Council could take less onerous measures. Specifically, Council could require restaurateurs to provide, in writing, a list of the types of entertainment planned, and the assurance that food service will remain the primary function. If restaurateurs wish to alter the list of entertainment offerings, they would agree to return to Council for support. In its communication with the LCLB, Council could explicitly tie its approval of entertainment to the restaurateurs written assurances.

Council could also monitor and, where necessary, hold the LCLB accountable for ensuring that all food primary licensees respect the letter and spirit of the regulations.

- *Extended Hours ?* Food primary licensed restaurants will be able to receive permission from the LCLB, with the consent of Council, to provide extended hours of liquor service (beyond 12:00 a.m.) along with food. This potential change needs to be considered alongside the discussion that takes place in Chapter 5 on the issue of extended hours for liquor primary establishments. For reasons explained in Chapter 5, the report recommends that hours of liquor primary licensed establishment NOT be extended beyond current limits. The same recommendation should apply to liquor service in restaurants. To do otherwise would be to turn restaurants into a magnet for patrons forced to leave the pubs, bars and nightclubs. Problems involving noise, crowds, uncivil behaviour and impaired driving could very well emerge in and around the areas in which the restaurants are located.

The discussion of anticipated and potential changes to food primary establishments highlights a number of recommendations.

- *Recommendations:*

THAT Council monitor the introduction and operation of lounges and, where necessary, hold accountable the LCLB inspectors for enforcing provincial regulations.

THAT Council endorse restaurants' requests for patron-participant entertainment, but only in cases where the individual restaurant provides, in writing, an outline of the types of entertainment planned, and the assurance that food service will remain the primary function.

THAT Council, in its communication with the LCLB, explicitly tie its consent for patron-participant entertainment to the written assurances.

THAT Council monitor and, where necessary, hold the LCLB accountable for ensuring that all food primary licensees respect the letter and spirit of the regulations as they relate to patron-participant entertainment.

THAT Council NOT endorse any extensions to liquor service hours for food primary licensed establishments.

Endnotes:

- ^{viii} LCLB policy staff, in conversation with the consultant, suggested that Council's linking of its recommendation to a particular style of operation (as presented by the applicant) would provide grounds for the Branch to review the license if the licensee significantly changed the nature of the establishment in the future.

5

DOWNTOWN NANAIMO

Part II

Liquor Control in Downtown Nanaimo:

A proactive and comprehensive liquor control strategy for Downtown Nanaimo is required to address the serious liquor-related issues affecting the community, and to support the City's multi-million dollar program of downtown revitalization.

Figure 5.1 identifies, from Chapter 2, those issues which are of particular importance to the downtown core. Of all entries in the list, concerns over public disorder are perhaps the most critical. Incidents of public disorder, it seems, are linked in some way to most, if not all, of the other issues. In some cases, the incidents appear to be a cause of the other issues. It can be said, for example, that public disturbances in the downtown core cause, or at least contribute to, the widely-held perception of Downtown Nanaimo as an unsafe and unappealing area. In other cases, incidents of public disorder appear to be the result of the other issues. For example, disturbances may be a result of certain business practices at nightclub establishments. Disturbances may also be validated, to some degree, by the broader community's acceptance of uncivil behaviour.

Figure 5.1
Issues Important to Downtown Core

- Public Disorder
- Perception of Downtown
- Dead Zones
- Incompatible Land Uses
- Market-Led Destruction of Diversity
- Nightclub Businesses
- Demands on the RCMP
- Alcohol-Related Social Problems
- Community Acceptance

Given the linkages between public disorder and the other individual concerns, it stands to reason that efforts designed to curb uncivil behaviour and disturbances will help to address, in some way, the full range of issues affecting the downtown community. The principal target of the liquor control strategy for Downtown Nanaimo, therefore, is public disorder.

Guiding Principles:

Chapter 4 introduced various principles to guide the development and implementation of Council's liquor control strategy. One of the principles highlighted the lack of a panacea for resolving the liquor-related issues affecting the core. Council's strategy for Downtown Nanaimo needs to recognize this reality and include a wide range of measures designed to work in combination towards positive change.

The other principles, which are re-introduced in Figure 5.2, are equally important. They should help to drive the identification and assessment of options, and should be reflected in the choices ultimately made.

Liquor Control Strategy:

This section of the report identifies and assesses a wide variety of options for addressing liquor-related public disorder in Downtown Nanaimo. As noted earlier, it is expected that efforts to curb public disorder will help to address the other important issues affecting the core. The categories of options considered here include:

- good neighbour agreements
- cost recovery efforts
- fines for uncivil behaviour
- engaging nightclub businesses
- hours of liquor service
- licensing process
- provincial government accountability
- publicity

**Figure 5.2
Guiding Principles**

Principle	Description
No Panacea	- there is no one, quick-fix solution; a wide array of efforts is required
Full Range of Tools	- Council has at its disposal a wide range of tools to effect change - all types of tools should be considered and used in concert with one another
Civic Responsibility	- nightclubs and other licensed establishments have a civic responsibility to operate their businesses in ways that contribute positively to the development of the community
Cooperative Approach	- the probability of success will be increased if the City works in cooperation with key stakeholder groups
Balance	- approaches to resolve issues must take into account a wide range of factors: the rights and responsibilities of consumers, the rights and responsibilities of industry, the health of the community, and the limited resources of the City - approaches that completely ignore certain interests or factors are not balanced
Vigilance	- notwithstanding the need for balance, Council and the community need to be vigilant in embracing and defending the values and vision that the community has identified as critical to its long term health and vitality

Each category of options is discussed separately in the remainder of this chapter. Recommendations are provided where warranted.

➤ **Good Neighbour Agreement**

Various municipalities, including Kelowna, Kamloops, New Westminster, Whistler and Ottawa, require nightclub establishments to enter into good neighbour agreements with City Hall. Efforts aimed at creating a similar agreement for Nanaimo's

establishments were undertaken recently by the NCCA, but were subsequently placed on-hold.

While the precise wording used in other cities varies, all good neighbour agreements are based on the fundamental premise that nightclub establishments have a civic responsibility to control the conduct of their patrons, both within and outside of the individual establishments. The agreements outline various conditions and expectations that signatories are expected to meet. In the City of New Westminster's agreement, for example, each nightclub establishment undertakes to:

- ensure that noise emissions do not disturb the neighbourhood (as per the City's *Noise Bylaw*)
- monitor, using uniformed staff, the activity of patrons outside of the establishment, particularly at closing time, in the parking lot and in public areas within a one-block radius of the club
- encourage the orderly dispersal of patrons in ways that do not disturb the peace, quiet and enjoyment of the neighbourhood
- contact the police for assistance in cases where staff are unable to facilitate an orderly dispersal of patrons
- follow a zero tolerance policy for criminal activity within the venue
- disallow strippers or exotic dancers as a form of entertainment
- provide patrons the opportunity to purchase non-alcoholic beverages at a price which is less than the price of alcoholic drinks
- refrain from selling alcoholic beverages at deep discounts, or across-the-board discount prices
- inspect the outside of the premises each night after closing to ensure that there is no litter, garbage or broken glass in the immediate area
- recognize its role as a responsible corporate citizen and neighbour within the community by agreeing to work with the City and community groups to identify and resolve mutual concerns
- participate as an active member in the local HILLAC group

The decision by nightclubs to enter into good

neighbour agreements is a voluntary one. Despite this voluntary nature, non-compliance by signatories does give a council leave to initiate a show-cause hearing, which could result in a suspension or cancellation of the establishment's business license (see section 660 of the *Local Government Act*).

New Westminster Council is presently taking steps to incorporate the contents of its good neighbour agreement directly into the City's *Business License Bylaw*. This effort is designed to emphasize the importance of the conditions on nightclubs, and to strengthen the ability of Council, under section 660 of the *Local Government Act*, to initiate the cancellation of business licenses for non-compliance.

It is recommended that Nanaimo Council develop a *City of Nanaimo Good Neighbour Agreement* for the six nightclubs in the downtown core. It is further recommended that, for the time being, the *Agreement* be voluntary in nature and include, at a minimum, the full range of conditions contained in the City of New Westminster model (customized to the Nanaimo context). Over time, Nanaimo Council may wish to extend the *Agreement* beyond nightclubs to other types of licensed establishments. At present, however, it is suggested that the experiment be tested on nightclubs only.

• *Recommendations:*

THAT Council instruct staff to develop a Good Neighbour Agreement that:

- *applies, separately, to the six nightclubs in Downtown Nanaimo*
- *is, for the time being, voluntary in nature in terms of compliance*
- *includes the full range of conditions as contained in the City of New Westminster model*
- *is signed by the Mayor, the RCMP Superintendent and the legally appointed representative of the particular nightclub*

► **Cost Recovery Efforts**

Earlier in the report, the point was made that the RCMP concentrates the bulk of its on-duty resources in the downtown core on most weekends to deal with the frequent crowds and disturbances that occur outside of the nightclubs. The RCMP is able to avoid incurring overtime charges only by limiting the level of service provided to the remainder of the community. The cost of providing increased service

to the downtown core, however, is still significant. Moreover, it is the residents and property owners outside of Downtown Nanaimo who are, in essence, paying for the extra downtown service.

Expecting the rest of the City to pay for the extra service required in the downtown core does not seem appropriate. Council should consider taking steps to hold the nightclubs accountable for the costs incurred. Such steps would promote equity, and, it is expected, provide an incentive (in combination with other measures such as the *Good Neighbour Agreement*) for nightclubs to take a more active interest in the behaviour of their patrons. Council has a number of cost recovery options to consider:

- *Business License Fee ?* Cabarets already exist as a separate category in the City's *Business License Bylaw*. At present, the establishments are charged \$1,100 per year for the privilege of being able to operate in the municipality. It may be argued that, given the cost of the City's policing function, \$1,100 is quite low. Council may wish to consider increasing this amount significantly to neutralize the current cost impact. The exact size of increase would need to be determined after receiving from the RCMP the cost to the Detachment of dealing with nightclub crowds.
- *Direct Billing ?* Policing is a distinct municipal service provided to property owners, including businesses, in Nanaimo. Businesses which, in effect, demand inordinately high levels of service should be expected to pay a cost premium. This argument has been advanced by the City to recover the cost of other services provided at high levels to agencies such as the Nanaimo Port Authority.

In theory, the City could directly bill nightclub owners for specific incidents that require a substantial police response. In practice, however, two problems would become apparent under such a scheme. First, the prospect of having to pay a separate bill for particular police call-outs may leave nightclub staff reluctant to contact police in any situation, including serious incidents in which lives are threatened. Second, except in cases where police are summoned directly to a particular establishment, it would be difficult to link a particular call-out (e.g., for a street disturbance) to a specific club.

- *New Tax ?* The draft *Community Charter* proposes a series of new revenue generating and cost recovery tools for municipalities.

Consultation on the *Charter* is still underway and, as such, it is too early to conclude which specific tools may survive the editors' reviews. One tool that has been proposed, however, is an entertainment tax. Conceivably, this tax could be applied to a class of land use (nightclubs) to pay for the cost of certain services (policing).

Pending final decisions on the contents of the *Community Charter*, it would appear that the best cost recovery option available to Council at present is to increase the business license fee charged to nightclubs.

- *Recommendations:*

THAT Council direct the RCMP to provide a cost estimate of the extra policing required to handle the crowds of nightclub patrons in Downtown Nanaimo.

THAT Council direct staff to use the RCMP estimate as a basis for determining, subject to Council approval, a new nightclub business license fee.

► **Fines For Uncivil Behaviour**

The City of Edmonton, the City of New Westminster and the City of London (UK) have each recently introduced bylaws to empower (and instruct) police to levy fines against individuals for uncivil behaviour. In Edmonton, fines are limited to individuals who are caught fighting in public. In both New Westminster and London, fines are targeted against all forms of public disorder.

In BC, the mechanism for applying such a fine is a public nuisance bylaw that specifies the downtown core as an "anti-nuisance zone". Any individual observed by police as behaving in an uncivil manner (broadly defined) within the specific zone is guilty of an offence under the bylaw. (The bylaw is best designated as a ticket offence bylaw in order to allow for the issuing of tickets at the scene.)

The size of the fine clearly influences the effectiveness of the tool as a deterrent of unruly behaviour. The City of Edmonton levies a fine of \$250, which has made the program quite effective at reducing the number of disturbances. In London, where the program is too new to assess, fines range from \$100 to \$200, depending on the seriousness of the offence. These rates are deemed by officials to be sufficiently strict. In New Westminster, the fine is

only \$50, which is judged by City officials as too low. The City is expected to review this level in the near future.

- *Recommendations:*

THAT Council direct staff to create a Public Nuisance Bylaw to provide the authority for police to ticket individuals who are behaving in an uncivil manner (broadly defined).

THAT the ticket fine be set at \$150.

► **Engaging Nightclub Businesses**

The good neighbour agreements referred to earlier represent one way in which the nightclub establishments themselves can be engaged by Council to assist in resolving liquor-related issues. There are other initiatives that Council may wish to consider undertaking in concert with the agreements.

One initiative would involve establishing a *Stakeholder Task Force* to monitor the situation in Downtown Nanaimo. The *Task Force's* membership could include one representative from each of the following stakeholder groups:

- the nightclubs
- Council's Downtown Centre Standing Committee
- the RCMP
- the NCCA
- the Working Group on Downtown Social Issues
- the LCLB

The *Task Force*, which could report to Council's Downtown Centre Standing Committee, would have carefully defined terms of reference that would include responsibility for:

- monitoring the extent of public disorder related to the city's nightclub establishments and patrons
- monitoring the level of nightclub compliance with the *Good Neighbour Agreement*
- monitoring the success of various other initiatives (recommended by this report and other sources)
- identifying other issues of concern (e.g., nightclub façades that contribute to the creation of "dead zones"), as well as strategies for addressing the issues

Groups similar to the suggested *Task Force* exist in

various cities, including Kamloops and Vancouver.

A second initiative for Council to consider comes from the UK city of Barrow-in-Furness and is called "Bar Watch". This initiative, which receives funding from the British Home Office through an umbrella program aptly titled "Project Hammered", relies on the direct participation of the various licensed establishments in Barrow's downtown core. Participating establishments are linked together via radio (e.g., walkie-talkies). When staff at one establishment identify persons acting in an uncivil manner, the staff pass along the information to their colleagues at other clubs, who are able then to issue warnings or deny entrance to the individuals. Under the program, participating establishments also agree to ban outright from their premises individuals who are convicted of violent or drug-related crimes. As reported from the UK, licensed establishments have a clear message for their patrons: "behave or be banned."^{ix}

Nanaimo Council, in cooperation with the RCMP and the nightclub establishments, should consider introducing a *Bar Watch Program* similar in nature to the program in Barrow. Barrow's program extends beyond its nightclubs to include over 70 establishments; Nanaimo's could begin more modestly and focus on the city's six cabarets. In establishing a *Bar Watch Program*, Council will need to work with staff on identifying and addressing legal and human rights concerns. None of these concerns, however, is insurmountable.

- *Recommendations:*

THAT Council establish a Stakeholders Task Force with representation from the nightclub businesses, Council's Downtown Centre Standing Committee, the RCMP, the NCCA, the Working Group of Downtown Social Issues and the LCLB.

THAT the Task Force have defined terms of reference and report to the Downtown Centre Standing Committee.

THAT Council work with staff, the RCMP and the nightclub businesses to establish a Bar Watch Program designed to penalize, through warnings and denied entry to nightclubs, persons who are acting uncivilly.

► **Hours of Liquor Service**

Effective 2002-DEC-02, licensed establishments will be permitted to apply for extended hours of liquor

service (to 4:00 a.m.). Local governments will have the authority under the new system to reject any or all such applications.

Proponents of the extended hours suggest that the change would result in a gradual, controlled departure of patrons from the clubs, as opposed to the mass exodus that presently occurs at the standard 2:00 a.m. closing time. Proponents also suggest that if patrons knew they could receive liquor service until 4:00 a.m., they would be less inclined to binge drink at 1:45 a.m. in anticipation of the earlier closing.

Others, including Nanaimo's RCMP, believe that an extension of nightclub closing times from 2:00 a.m. to 4:00 a.m. would constitute a grave error. More specifically, opponents to the concept suggest that:

- the mass exodus that presently occurs at 2:00 a.m. on weekends would simply be deferred until 4:00 a.m.
- the requirement for police to be on-hand in significant numbers would wreak havoc on RCMP scheduling which, in turn, would result in significant overtime costs
- the binge drinking that occurs at 1:45 a.m., could just as easily occur at 3:45 a.m.
- the public disorder that seriously impacts the downtown community on weekend nights would continue for even longer into the early morning
- an increase in liquor service hours would further enhance the social acceptability of alcohol and excessive drinking
- the risks to the community of a change in hours are not warranted in order to satisfy the demand of a very small portion of the population

Whose position is more valid – that of the proponents, or that which is held by groups, including the RCMP, that oppose extended hours? Empirical evidence on the effect of extended liquor service hours is very scant in Canada. Indeed, the only meaningful change in hours of liquor service identified in the research undertaken for this report resulted in a contraction of hours. In Hull, Quebec in the late 1990s, Council voted to change the closing time for nightclubs from 3:00 a.m. to 2:00 a.m. in an effort to discourage party-goers from Ottawa from descending on Hull after the 2:00 a.m. Ottawa closing time.

To find examples of jurisdictions in which hours have been extended, it is necessary to look overseas, particularly to the UK, New Zealand and Australia. Each of these three countries has experimented with extended hours, in some cases beyond the 4:00 a.m. time proposed by the BC government. One of the key reasons behind the changes was the belief – shared by the BC government – that the extension of hours would, in itself, serve to reduce disorder on the streets by facilitating the dispersal of patrons over a longer period of time. The research uncovered no evidence to support this theory. Indeed, the only evidence that was found suggests that the extension of hours tends to exacerbate the degree of public disorder.

The following quotations are excerpted from a recent New Zealand article titled "24 Hour Licensing: Overseas Research on the Impact of Increased Hours of Trading":^x

"...By the mid 1990s, very late hours of on-license trading [liquor service in establishments] were causing concern in New South Wales and Queensland, and 24 hour licensing was being cut back in the Australian Capital Territory because of increased intoxication, disorder and violence in the inner cities..."

"...When 75 Perth hotels, taverns and nightclubs were granted extended trading permits, there were significant increases in assaults, as well as road crashes and drink driving offences associated with these premises occurring at later hours. In comparison, premises with normal hours were cited less frequently..."

"...In Scotland, relaxation of Scottish licensing hours in 1977 resulted in a 13% increase in alcohol consumption..."

"...In the late 1980s Edinburgh, as a centre of tourism, granted different late night openings to licensed premises throughout the city. An evaluation project documented distress to local residents and difficulties in policing. A widespread campaign of opposition led to earlier, uniform closing times in certain urban zones in 1989. This [action] resulted in a 30% reduction in drink-related violence and disorder..."

"...Evaluation of the 1988 extension of trading hours in Britain showed that the more heavily people drank, the more likely they were to make use of the later drinking hours..."

A separate 1998 article from the British journal *Alcohol Alert* reviews the impacts of regulatory changes in New Zealand.^{xi} With respect to extended hours of trading, the article notes that:

"...In interviews in 1995, ...some police reported experiencing not just a delay but an increase in street disorder associated with late opening premises. In their view, drinking over longer hours was resulting in increased levels of intoxication, and increased problems requiring police attention..."

Finally, a position paper released by the Institute of Alcohol Studies in response to the British Government's current liquor policy review refers, again, to the Scottish experience. The paper refers to the Safer Edinburgh Project which was initiated by the British government in the late 1980s to address liquor-related problems in Edinburgh's city centre. The paper notes that:

"...the implementation of the [current] government's proposals [for extended hours] is much more likely to result in the situation identified by the Safer Edinburgh Project Team, that extended drinking hours had gone too far, 'meeting the needs of the licensed trade and a small section of the drinking public at the expense of the wider community'."^{xii}

The evidence from overseas English-speaking countries suggests strongly that Nanaimo RCMP's concerns with respect to extended hours of liquor service are valid.

- *Recommendation:*

THAT Council announce, by resolution, that it will NOT consent to extended hours for liquor licensed establishments in Nanaimo.

► **Licensing Process**

Under the new liquor regulatory system, Council will have wide discretion (as it does now) through the licensing process to, in essence, approve or reject any or all applications for liquor primary licenses in Nanaimo. Council will also have wide discretion (as it does now) over the design of its application review process. The legislation will specify certain factors that must be considered by the City, but will not limit the overall number or range of factors that Council may take into account.

The licensing recommendations of municipalities are often driven by the number of existing licensed seats in the particular city or neighbourhood. Local governments around the province tend to place great emphasis on the number of existing seats within a particular license class (e.g., nightclub) when considering whether or not to recommend the approval of new licenses that will add to the overall capacity. The "desirable" number of seats that is used to guide municipal decisions is most often determined by examining seating numbers in comparable jurisdictions.

In some municipalities, ideology rather than existing seat numbers appears to be the primary motivator for decision makers. Some councils take the view that all applicants should be given the opportunity to open an establishment, and that the market will determine which establishments remain in business. Other councils hold the position that there are too many establishments already, and that no additional applications should even be entertained.

The reliance on seating numbers and/or ideology for licensing recommendations seems overly simplistic. A better option for Nanaimo may be an approach that allows Council to use its broad licensing discretion creatively. The following points outline such an approach for Council to consider:

- Council would agree to review all applications for liquor primary licenses in Downtown Nanaimo, regardless of the type, size or specific location of the proposed establishment. Each application would be judged solely on its own merits; Council would not be hampered by concerns over the number of existing seats or the community's past experiences with certain types of establishments.
- Each applicant would be given a package of material titled *Downtown Nanaimo Background Package for Liquor License Applicants*. The *Background Package* would outline the community's vision for the downtown core, and would itemize the efforts undertaken to date by the City and its partners to realize the vision. The package would also provide a description of the liquor-related issues (identified in this report) that have undermined the efforts to date and that have made the challenge of downtown revitalization more difficult than it needs to be.

Also included in the *Background Package* would be a copy of the City's *Good Neighbour Agreement* (for prospective nightclub operators), the terms of reference for the City's *Stakeholder*

Task Force, and a description of the City's *Bar Watch Program* (provided, of course, that the recommendations to establish these initiatives are accepted by Council).

- After being given an opportunity to review the entire *Package*, the applicant would be asked by the City to arrange, at the applicant's own expense, a public presentation. Notice of the presentation would be printed in the local media. Special invitations would be sent to neighbouring property owners within 150 metres of the proposed establishment, as well as to Council, the NCCA, the Downtown Nanaimo Partnership, HILLAC, the Downtown Working Group on Social Issues, NADAC, the RCMP and the *Stakeholders Task Force* (if created).
- The presentation would provide an opportunity for the applicant to explain to the community how exactly the proposed establishment would contribute positively to the development of Downtown Nanaimo. The presentation would provide an opportunity to members of the community to scrutinize the proposed application and pose tough questions to the proponent.
- Based largely on the quality of the presentation and the applicant's ability to satisfactorily answer the community's questions, Council would form its recommendation.

One of the chief advantages of this suggested process is that it puts the onus on the applicant to demonstrate clearly why the proposed establishment should be allowed in the community. In so doing, it encourages applicants to think carefully and creatively about steps that they can take to minimize public disturbances and promote the development of a healthy core. Properly motivated applicants would identify a range of initiatives that the establishment would commit to undertake, alone or with other establishments, to make Downtown Nanaimo a better place. Complying with the *Good Neighbour Agreement* and participating in the *Bar Watch Program* would be the minimum commitments required. Other commitments proposed by the applicant might involve:

- sending staff for specialized training in conflict resolution and incident management
- developing strict serving standards that help to eliminate intoxication
- implementing changes to building and façade designs to help eliminate "dead zones"
- improving designated driver programs for patrons

- actively participating in the NCCA, HILLAC and other community/industry groups that exist to promote responsible business operations
- developing promotions designed to attract niche markets that are inclined to be less boisterous than typical nightclub customers

The range of efforts that enhance, rather than detract from, the potential of Downtown Nanaimo is limitless. The onus for creativity would be on the applicant. The obligation of the City and the community would be to hold the applicant accountable for honouring his or her commitments. If an applicant failed to live up to his or her commitments, the City would be obligated to initiate a show-cause hearing under its business licensing authority.

The suggested approach recognizes that it is not necessarily the number of licensed premises or the number of seats that create problems for the downtown core. A more significant cause of Downtown Nanaimo's liquor-related troubles is the way in which premises are operated. The approval of new establishments that are committed to responsible liquor service would, it is suggested, help to set a higher standard of conduct for all nightclubs and their patrons. Establishments that failed to meet the higher standard would be targeted by the RCMP, City Hall and the community.

- *Recommendation:*

THAT Council direct staff to develop a new liquor licensing review process that places the onus on each applicant to demonstrate to the community how exactly the proposed establishment would contribute positively to the development of Nanaimo.

➤ **Provincial Government Accountability**

In announcing its changes to the liquor control framework, the provincial government has repeatedly emphasized its commitments to enforcement and public safety. The government has stated that the savings generated by its loosening of certain regulations will allow the LCLB and its inspectors to better monitor and enforce the critical regulations that are designed to prevent:

- liquor service to minors
- the over-crowding of establishments
- sales strategies designed to encourage over-drinking and binge drinking

- the serving of liquor to intoxicated patrons

These practices, and the failure to eliminate them, contribute to the conditions necessary for the liquor-related public disorder that plagues Downtown Nanaimo. It is imperative that the LCLB remain true to the provincial government's word and properly enforce these and other critical regulations.

Through the RCMP, the *Stakeholders Task Force*, the NCCA, NADAC, the Downtown Working Group on Social Issues, HILLAC and all other interested organizations, the City needs to keep abreast of the LCLB's enforcement efforts. If enforcement is found wanting, Council must, using whatever means necessary, hold the provincial government to account.

- *Recommendation:*

THAT Council monitor closely the enforcement efforts of the LCLB and, if necessary, hold the provincial government to account for its commitment to improved enforcement of critical liquor regulations designed to promote public safety.

➤ **Publicity**

The potential effectiveness of Council's liquor control strategy for Downtown Nanaimo will be enhanced by a well constructed public relations campaign directed at the broader community. Such a campaign would be ongoing, and would consist of three parts:

- *Introduction ?* Council's policy and its various components would be introduced to the community in a high profile fashion. A booklet could be developed to outline in detail the various initiatives being undertaken. A press conference involving the Mayor, the Superintendent of the RCMP and the *Stakeholders Task Force*, could be held to unveil the booklet and answer questions of the media. A timetable for the release of specific documents and programs (e.g., *Good Neighbour Agreement* and *Bar Watch Program*) would be provided.
- *Annual Report Card ?* Each year, the City could release a report card to evaluate progress in addressing liquor-related issues in Downtown Nanaimo. Areas of success would be highlighted, as would areas in need of further improvement. The report card could include quantitative measures, such as increases or decreases in the

cost of policing nightclub crowds. The report could also include qualitative information aimed at tracking changes in perception of the core.

- *Ongoing Developments ?* It would be important to bring to the attention of the community key developments that occur throughout the year. Notices of presentations by liquor license applicants, for example, could be publicized. Announcements advertising the completion of a *Good Neighbour Agreement* or another initiative could also be made. More negative news items would also be important to publicize. For example, an establishment's failure to comply with the terms of the *Good Neighbour Agreement*, or charges against an establishment by LCLB inspectors could be announced.

The Downtown Nanaimo Partnership may be best suited to the task of developing and implementing an ongoing public relations campaign to support the downtown liquor control strategy. The DNP's two funding bodies – the NCCA/OCQA and the City – would need to provide separate financial and in-kind assistance to ensure the longer-term viability of the campaign.

- *Recommendation:*

THAT Council work direct staff to work with the NCCA/OCQA and the DNP on developing the concept of an ongoing public relations campaign to support the City's liquor control strategy for Downtown Nanaimo.

Endnotes:

- ix A. Crewdson: "Project Hammered – Safer Drinking, Safer Streets", in *Alcohol Alert*, 2002, Issue 1
- x Alcohol and Public Health Research Unit (New Zealand): "Overseas Research on Impact of Increased Hours of Trading", 2002
- xi L. Hill: "From '6 O'clock Swill' to 24 Hour Trading: Liberalization and Control of Licensing Hours in New Zealand", in *Alcohol Alert*, 1998, Issue 2
- xii Institute of Alcohol Studies (UK): *Time for Reform: Proposals for the Modernization of Our Licensing Laws – Response from the Institute of Alcohol Studies*, 2001, p. 19

6

SUMMARY OF RECOMMENDATIONS

Introduction:

This report has outlined and recommended the need for the City of Nanaimo to develop two liquor control policies, one for the areas outside of the core, and one for Downtown Nanaimo. This chapter summarizes the specific recommendations that have been made under each of these policies.

Part I

Liquor Control Outside the Core:

► Licensee Retail Stores

THAT Council announce, by resolution, that it will NOT support any re-zonings required to establish additional liquor licensee retail stores.

► Change in Style of Operation

THAT Council tie future recommendations for license approval to the vision and plan outlined by the proponent to the community;

THAT Council adopt the following definition for "neighbourhood pub" in the Zoning Bylaw:

A "neighbourhood pub" is licensed to serve liquor as a liquor primary establishment under the Liquor Control and Licensing Act and Regulations. A "neighbourhood pub" offers full lunch and dinner menus, complete with hot and cold meals. Forms of patron-participant entertainment are permitted in the establishment. Forms of adult entertainment, including exotic dancing and stripping, are not permitted in any part of the establishment at any time.

► Food Primary Establishments

THAT Council monitor the introduction and operation of lounges and, where necessary, hold accountable the LCLB inspectors for enforcing provincial regulations.

THAT Council endorse restaurants' requests for patron-participant entertainment, but only in cases where the individual restaurant provides, in writing, an outline of the types of entertainment planned, and the assurance that food service will remain the primary function.

THAT Council, in its communication with the LCLB, explicitly tie its consent for patron-participant entertainment to the written assurances.

THAT Council monitor and, where necessary, hold the LCLB accountable for ensuring that all food primary licensees respect the letter and spirit of the regulations as they relate to patron-participant entertainment.

THAT Council NOT endorse any extensions to liquor service hours for food primary licensed establishments.

Part II

Liquor Control in Downtown Nanaimo:

► Good Neighbour Agreement

THAT Council instruct staff to develop a Good Neighbour Agreement that:

- applies, separately, to the six nightclubs in Downtown Nanaimo*
- is, for the time being, voluntary in nature in terms of compliance*
- includes the full range of conditions as contained in the City of New Westminster model*
- is signed by the Mayor, Nanaimo's RCMP Superintendent and the owner or manager of each nightclub*

► Cost Recovery Efforts

THAT Council direct the RCMP to provide a cost estimate of the extra policing required to handle

the crowds of nightclub patrons in Downtown Nanaimo.

THAT Council direct staff to use the RCMP estimate as a basis for determining, subject to Council approval, a new nightclub business license fee.

➤ **Fines for Uncivil Behaviour**

THAT Council direct staff to create a Public Nuisance Bylaw to provide the authority for police to ticket individuals who are behaving in an uncivil manner (broadly defined).

THAT the ticket fine be set at \$150.

➤ **Engaging Nightclub Businesses**

THAT Council establish a Stakeholders Task Force with representation from the nightclub businesses, Council's Downtown Centre Standing Committee, the RCMP, the NCCA, the Working Group of Downtown Social Issues and the LCLB.

THAT the Task Force have defined terms of reference and report to the Downtown Centre Standing Committee.

THAT Council work with staff, the RCMP and the nightclub businesses to establish a Bar Watch program designed to penalize, through warnings and denied entry to nightclubs, persons who are acting uncivilly.

➤ **Hours of Liquor Service**

THAT Council announce, by resolution, that it will NOT consent to extended hours for liquor licensed establishments in Nanaimo.

➤ **Licensing Process**

THAT Council direct staff to develop a new liquor licensing review process that places the onus on applicants to demonstrate to the community how exactly the proposed establishment would contribute positively to the development of Nanaimo.

➤ **Provincial Government Accountability**

THAT Council monitor closely the enforcement performance of the LCLB and, if necessary, hold the provincial government accountable for its promises of improved enforcement of critical liquor regulations designed to promote public safety.

➤ **Publicity**

THAT Council work direct staff to work with the NCCA/OCQA and the DNP on developing the concept of an ongoing public relations campaign to support the City's liquor control strategy for Downtown Nanaimo.

ADDENDUM TO REPORT

Licensee Retail Stores:

Page 18 of the *Report* (Chapter 4) discusses the issue of licensee retail stores (LRS) in Nanaimo. The text explains that on 2002-AUG-12, the provincial government lifted the decade-long moratorium on LRS, at least temporarily. Until 2002-NOV-29, holders of a Class 'A' license for a hotel or resort, and holders of a Class 'C', 'D', 'F' or 'I' license, may obtain a Class 'G' license to open and operate a LRS. If the applicant has a satisfactory history as a liquor license holder, and if the zoning for the proposed establishment allows a licensee retail store, the LCLB must grant a Class 'G' license to the applicant.

The City's current *Zoning Bylaw* uses a "cold beer and wine stores" definition to specify the particular commercial zones in which licensee retail stores are permitted. This definition, which defines LRS based on a limited range of saleable products (i.e., beer and wine), is consistent with the definitions used by several other municipalities in British Columbia. In recent weeks, since the *Report* was submitted, it has come to the attention of staff and the consultant that the existing "cold beer and wine stores" definition may not be valid as a tool to specify the exact types of commercial zones in which LRS are permitted.

The problem with the existing definition relates to its reference to saleable products. On 2002-APR-02, the provincial government expanded the range of allowable products in LRS to include spirits in addition to beer and wine. This change, in the view of the City's solicitor, served to effectively remove LRS from the constraints associated with the "cold beer and wine stores" category. The solicitor feels that, in the absence of a specific "liquor store" category, LRS become general retail uses, allowable in most commercial zones.

It is worth noting, by way of context, that the province's decision to allow the sale of spirits through LRS did not, by itself, create a problem for municipalities. At the time of the change, the decade-long moratorium on new LRS was still in effect. In a 2002-MAR-15 news release, the Solicitor General assured local governments that any decision to lift the moratorium would be made in consultation with local councils. The actual lifting of the

moratorium on 2002-AUG-12, however, was done with no consultation. Had municipalities been consulted on the decision, potential problems with inadequate definitions may very well have been avoided.

Options:

City staff report that there are 26 licensed establishments in Nanaimo that are eligible to apply to the LCLB for Class 'G' LRS licenses. Of these, 21 are situated in commercial zones that do not allow "cold beer and wine stores", as defined using the existing problematic definition. At the time of writing the *Report*, it was anticipated that these 21 candidates would be required to seek re-zoning from Council. The requirement for re-zoning is now less clear.

Council has essentially three options to consider in dealing with the LRS issue:

► Accept LRS as a General Retail Use

Council could accept the view that the existing "cold beer and wine stores" definition does not apply to LRS, primarily because of their ability to sell spirits (which, again, is not addressed in the definition). In accepting this view, Council would be adopting the position that LRS are permitted as retail uses in all general retail commercial zones, including such zones in Downtown Nanaimo.

The City would need to implement this option by informing the General Manager of the LCLB of Council's position. Recent discussions with LCLB staff suggest that, despite the view of the City's solicitor, the LCLB accepts the existing "cold beer and wine stores" definition for the purpose of reviewing LRS applications. Without direction from Council, therefore, the LCLB would turn down all Class 'G' license applications from establishments not situated in a zone that allows "cold beer and wine stores". The applicants in such cases would either lose their application fees or be forced to seek re-zoning from the City.

➤ **Defend the Existing Definition**

Council could take the position that the existing definition, while not completely up-to-date, continues to apply to all LRS and would be interpreted as such by a reasonable person. In taking this position, Council would find support in the LCLB, which has reviewed the existing definition and has deemed it valid for the purpose of LCLB's application process.

The trouble with this position is that the LCLB, while supportive, is not the ultimate judge of the validity of the zoning definition. An applicant who felt that the definition on which the LCLB made a licensing decision was invalid could decide to challenge the definition in court. The court would then decide whether or not the "cold beer and wine stores" definition remains applicable to LRS. The City's solicitor has advised that the courts may not agree with the LCLB's interpretation.

➤ **Ask the LCLB to Hold Downtown Applications Pending a Completion of the Zoning Exercise**

The recent adoption by Council of the *Downtown Plan* created the need for a comprehensive review of zoning in the downtown core? the review, which is presently underway, began before the August lifting of the LRS moratorium. The zoning exercise is intended to enable the City to work with the community to identify where various types of land-uses, including LRS, should be allowed. The decisions reflect the experiences of stakeholders in the area, as well as the values of the downtown community.

This option, if accepted by the LCLB, would provide the time required for the community to answer – current definition notwithstanding – the following types of questions:

- Does the community continue to believe, as it did a decade ago, that licensee retail stores (formerly referred to as cold beer and wine stores) should be prohibited from locating within the downtown core?
- Should LRS be permitted throughout the core?
- Should LRS be permitted in only certain parts of the core?

BC's *Liquor Control and Licensing Regulations* empower the LCLB's General Manager to canvass a

local community on applications that the Manager feels are, for whatever reason, potentially controversial. Where the General Manager's canvassing efforts determine that community opposition to an application is strong, the *Regulations* require the Manager to not issue a license. The option of asking the LCLB to hold Downtown applications pending a completion of the zoning exercise recognizes that the General Manager does have the discretion necessary to consider the community's input in potentially controversial situations. The option, in essence, asks the General Manager to exercise her discretion and let the community decide.

The option, as is apparent, deals specifically with Downtown Nanaimo. Downtown Nanaimo is the focus of the current zoning exercise, and is the part of the community in which it is expected that LRS applications would generate the most controversy. Areas outside of the downtown core would not be affected by this option.

Recommendations:

With respect to Downtown Nanaimo:

THAT Council ask the LCLB to reserve any decisions on Class 'G' applications for Downtown Nanaimo until the City and the community have completed the ongoing Downtown zoning review.

With respect to the areas outside of the core:

THAT Council notify the LCLB that the City's existing "cold beer and wine stores" definition is not considered applicable to LRS applications.