



October 27, 2010  
File: 0705-40

Karen Ayers  
Assistant Deputy Minister & General Manager  
Ministry of Housing and Social Development  
Liquor Control & Licensing Branch  
PO Box 9292, Stn Prov Govt  
Victoria, BC V8W 9J8

Dear Ms Ayers:

Re: Liquor License Infractions and Penalties

I am writing on behalf of Kelowna City Council following the October 25, 2010 Regular Meeting of Council, at which the following resolution was passed:

**THAT** Council directs staff to write a letter to the Liquor Control & Licensing Branch requesting that the following information be provided to Kelowna City Council:

- a) clarification of the liquor license suspension process, including the length of time between when an offence has occurred and when the penalty is imposed, and
- b) clarification with respect to the determination of the length/severity of the penalty and when the suspension occurs.

As discussed with you today, there has been strong community interest in several liquor license suspensions recently imposed on businesses in the City of Kelowna. As this has generated broad discussions about control and licensing of liquor generally, any information you are able to provide Council on the type of infractions occurring in our community would be helpful to us.

I look forward to hearing from you with regards to the information requested, and once again would like to express my willingness to participate in a greater discussion on Liquor Control and Licensing in BC should this be a conversation the Province considers initiating.

Yours very truly,

A handwritten signature in cursive script that reads "Sharon Shepherd".

Sharon Shepherd  
MAYOR

pc: City Council  
City Manager

City Clerk  
Luke Turri, Land Use Management

*City Hall, 1435 Water Street, Kelowna, B.C. V1Y 1J4*  
*Telephone 250-469-8980 Facsimile 250-862-3399*



CITY OF KELOWNA

NOV - 9 2010

ADMINISTRATION DEPARTMENT

Original to: ~~Communications~~  
Copied: ~~Mayor~~  
~~City Manager~~  
Councillors

Luke Turri - Jim Peterso

File Number: 0705-40

Initials: Jim Date: Nov 9/10

November 8, 2010

Sharon Shepherd, Mayor  
City Hall  
1435 Water Street  
Kelowna, BC V1Y 1J4

Dear Mayor Shepherd:

**RE: Provincial Liquor Licence Contraventions and Penalties**

I am writing in response to your October 27<sup>th</sup> letter requesting clarification of the branch's enforcement process, in particular regarding liquor licence suspensions.

Liquor inspectors conduct regular inspections of licensed premises to ensure that licensees are complying with the *Liquor Control & Licensing Act* and the *Liquor Control & Licensing Regulation* and with the terms and conditions of their licences. These inspections may be done without notice to the licence holder both during and outside the establishment's operating hours. Liquor inspectors will generally focus on establishments with recent instances of non-compliance and those with unconfirmed or undetermined compliance history. In addition, local police departments regularly make unannounced visits to licensed establishments.

If, after an inspection or as a follow-up to a licensed premises check by police, a liquor inspector believes that the licensee or its staff are contravening the legislation or the terms and conditions of the licence, the inspector will generally issue a contravention notice (CN) that identifies the alleged contravention. The inspector then reviews the evidence and circumstances of the contravention in conjunction with the branch's file for the establishment. Based on that review, the inspector decides whether to recommend enforcement action against the licensee. This process may take some time depending on how quickly the inspector can gather the necessary information which often comes from the police or the licensee. If the inspector does not recommend enforcement action, the CN is kept in the branch's file for the establishment, and the license may be required to attend a compliance meeting.

If a liquor inspector recommends enforcement action, and the regional manager concurs, the licensee will receive a Notice of Enforcement Action (NOEA). The NOEA includes details of the allegation and the proposed penalty. The licensee has the option of disputing the branch's allegations at an enforcement hearing or signing a waiver notice. Signing a waiver means that the licensee agrees that the contravention occurred and the licensee accepts the recommended penalty. In general, a licensee who admits to a contravention will commence their licence

Ministry of Housing and Social Development

Liquor Control and Licensing Branch

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Location:  
Second Floor, 1019 Wharf Street  
Victoria BC

[http:// www.hsd.gov.bc.ca/lclb](http://www.hsd.gov.bc.ca/lclb)

suspension 7-14 days after signing the waiver and a monetary penalty will be due within 30 days from signing.

After receiving a NOEA, the licensee is invited to a pre-hearing telephone conference where the branch's registrar elicits the licensee's response to the allegations contained in the NOEA and provides information about branch procedure. If the licensee disputes the allegations, the registrar will organize a hearing. Enforcement hearings may be conducted in-person, via teleconference, written submission, or any combination of these.

At an enforcement hearing, an adjudicator, who is a delegate of the general manager, considers the evidence and argument presented by the licensee and the branch. The adjudicator decides whether the alleged contraventions occurred and what penalty, if any, is warranted. The licensee has the opportunity to speak to all aspects including penalty factors such as the timing of any order. The adjudicator issues a written decision approximately two to four weeks after the hearing.

Imposing a penalty is discretionary, and the adjudicator is not bound to order the penalty proposed in the NOEA. Section 20 of the *Act* allows the adjudicator to suspend a liquor licence, impose a monetary penalty, add/amend/rescind the terms and conditions of a licence, or cancel a licence or transfer a licence. When ordering a licence suspension or a monetary penalty, the adjudicator is bound to follow the minimums set out in Schedule 4 of the *Regulation*. The adjudicator is not bound by the maximums and may impose higher penalties when it is in the public interest to do so. Monetary penalties are only available for a first contravention, and the severity of suspensions increases for each contravention of the same type within a twelve month period.

The branch's primary goal in bringing enforcement action and imposing penalties is achieving voluntary compliance. Among the factors that are considered in determining the appropriate penalty are the circumstances and seriousness of the contravention, the threat to public safety and the well being of the community, the licensee's compliance history and whether there is a past history of warnings by the branch and the police.

While dependant on the facts of each individual case, branch enforcement decisions generally provide a licensee with 30 days advance notice of a suspension or monetary penalty. This provides the licensee with sufficient time to prepare staff or seek legal advice on whether to petition to the BC Supreme Court for judicial review.

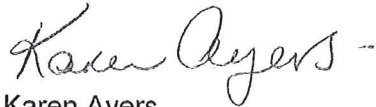
You also requested information about the types of contraventions identified by the branch in Kelowna establishments. Since January of this year, ten NOEAs have been issued to eight Kelowna establishments for the following contraventions:

- Selling liquor to minors: 2 instances
- Selling liquor to intoxicated person: 2 instances
- Permitting an intoxicated person to remain: 3 instances
- Permitting unlawful activities (drug sales): 1 instance
- Employee consuming liquor while working: 2 instances
- Operating contrary to the primary purpose of the licence (restaurant acting like a bar): 2 instances
- Entertainment beyond time permitted (band): 1 instance

Regarding timelines for NOEAs issued to Kelowna establishments, since 2003 through to the current date, it has taken on average 72 days from the date of the contravention to the date of the NOEA, 90 days from the date of contravention to waiver, and 199 days from the date of the contravention to the date of the hearing decision.

Thank you for the opportunity to provide clarification regarding the branch's enforcement and penalty procedure, and I look forward to a continued dialogue regarding branch activities in your community.

Yours truly,



Karen Ayers  
Assistant Deputy Minister  
and General Manager  
Liquor Control and Licensing Branch

cc: Kelowna City Council  
Ron Mattiussi, Kelowna City Manager  
Luke Turri, Land Use Management  
Gary Barker, Regional Manager  
Doug Hufsmith, Liquor Inspector