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Harbour East Community Council
February 3, 2011

TO: Chair and Members of Harbour East Community Council

SUBMITTED BY: Paul Dunphy
Paul Dunphy, Director of Community Development

DATE: January 18, 2011

SUBJECT: Licensed Establishments in Dartmouth

INFORMATION REPORT

ORIGIN

Motion of Harbour East Community Council (HECC) on November 4, 2010:

"MOVED by Deputy Mayor Smith, seconded by Councillor Nicoll, that Harbour East request staff to bring forward a report on amendments to the Dartmouth MPS and/or LUB to require all applications for beverage rooms, lounge and cabarets to allow a development agreement process similar to that passed on October 19, 2010 by Regional Council for Quinpool Road. MOTION PUT AND PASSED."

BACKGROUND

Types of Licensed Establishments

Under the Provincial Liquor Control Act and its associated regulations, there exists a variety of establishments which can be licensed to serve alcohol. This licensing process is undertaken through the Nova Scotia Utility & Review Board (NSUARB). In addition to restaurants (licensed as Eating Establishments), the main commercial forms of use include lounges, beverage rooms and cabarets. The permanent types of commercial establishments are as follows:

Uses	Characteristics	Potential Hours of Operation	Permits Live Entertainment
Tavern	Pub style facility serving <i>beer only</i> , with or without food.	until 2 am	yes
Beverage Room	Pub style facility serving <i>beer and wine</i> , with or without food.	until 2 am	yes
Lounge	Facility serving <i>all liquor products</i> , with or without food.	until 2 am	yes
Cabaret	A large scale (capacity over 400 people) establishment serving <i>all liquor products</i> and <i>featuring live entertainment</i>	until 3:30 am	yes

Existing MPS Policy and LUB Provisions

The Municipal Planning Strategy (MPS) for Dartmouth does not contain any policy addressing licensed establishments, except for the 2008 amendments prohibiting cabarets in the commercial zones. Further, the Land Use By-law (LUB) contains no provisions specific to licensed establishments.

The LUB does contain a general provision regarding the separation and buffering of new commercial development (including licensed establishments) from adjacent residential zones. This is simply a requirement for a landscaped buffer of 20 feet in depth, or 10 feet in depth where a 6 foot high opaque fence is provided. However, this requirement is applied only to new construction and is not applied to renovations or conversions of existing buildings.

The Dartmouth LUB allows all licensed uses (except cabarets) as-of-right in the C-2, C-2B, and C-3 zones, as well as the industrial I-1 and I-2 zones. Cabarets are only permitted in the I-1 and I-2 zones. Given the distribution of these zones, there is a high degree of potential for licensed establishments to locate directly adjacent to a residentially-zoned neighbourhood. In Downtown Dartmouth, all licensed uses (except cabarets) are permitted in both the Downtown Business and Waterfront zones. There is no ability to consider cabarets through the rezoning or development agreement process in either plan area.

Role of Nova Scotia Utility & Review Board

The Province, through the Nova Scotia Utility & Review Board (NSUARB), is the final approval authority for any licensed establishment. Regardless of whether a municipality allows these uses as-of-right or through a development agreement process, the agency undertakes its own public consultation/public hearing process. The purpose of the Board's public process is "*...to satisfy the Board that the premises to be licensed will not interfere with the quiet enjoyment of neighbouring properties, either public or private, including private residences, churches, nursing homes, hospitals and similar institutions.*"

Based on the principle of quiet enjoyment, the Board can:

- i) impose license restrictions to protect nearby properties, or rejects applications despite a municipality's land use rules which would otherwise allow an establishment; and
- ii) revoke or impose conditions on an existing license as was done with the former Sensations Cabaret on Wyse Road.

DISCUSSION

Locational Issue

The primary concern regarding licensed establishments is their potential to cause negative impacts when they locate adjacent to a residential neighbourhood. In Dartmouth there is substantial likelihood for this to occur, mainly along the commercially-zoned corridors which generally back onto residential areas. These commercially zoned corridors are:

Main Street	Pleasant Street	Portland Street	Prince Albert Road
Waverley Road	Windmill Road	Wyse Road	

There are also areas of industrial (I-1 and I-2) zoning which abut neighbourhoods, in the Woodside and Windmill Road areas, where all licensed uses including cabarets are allowed.

Options

Although most licensed establishments do not have unreasonable impacts, Council may determine that there is a need to increase the level of land use control which applies to such uses. Three options are available should Council wish to implement greater restrictions:

1. Enhancements to the Land Use Bylaw

To reduce the potential for conflicts with nearby residential uses, Council could enhance the LUB by defining acceptable location and site requirements for new and expanded licensed establishments. Amendments to the LUB could address provisions for each type of establishment or for all as follows:

- locational requirements such as:
 - prohibiting cabarets in industrial zones abutting a residential zone;
 - limiting location to the main commercial corridors, with direct access to those streets and not from side streets; and
 - restricting other licensed establishments or their parking areas where there is an abutting residential zone.
- larger minimum lot areas and frontages,
- greater requirements for screening/buffering from adjacent properties;
- that conversions of existing buildings are treated the same as new construction;
- limitations on:
 - maximum floor area;
 - amount and location of outdoor seating; and
 - where live entertainment is appropriate.

Staff maintain that such an approach would provide a high level of control on licensed facilities and continue to allow such uses as of right. The uses would be subject to NSUARB oversight and approval. In addition to regulating hours of operation and maintenance, the Board can also regulate matters such as patron capacity, live entertainment, and the playing of recorded music on outdoor patios.

Establishing enhanced LUB provisions for licensed establishments can be approved by HECC. However, all remaining options will require MPS and LUB amendments and the approval of Regional Council.

2. Site Plan Approval

Under the Site Plan Approval process licensed establishments would continue to be listed as a permitted use within the applicable commercial and industrial zones but subject to guidelines for site location and development standards similar to option 1. Hours of operation cannot be dealt with via this mechanism. The development officer would evaluate a proposal to determine if it meets the guidelines. Property owners within 30 metres of the site would be advised of the development officer's decision to approve an application, and of their right of appeal to community council. In the even of an appeal, HECC would render a decision on whether or not the proposal meets the guidelines, not whether the use should be permitted.

3. Development Agreement Process

Through a development agreement process, Council could address all of the requirements / provisions proposed under Option 1. A development agreement can also address two matters that a land use bylaw cannot. These are the hours of operation and to require maintenance of a site. Further, the development agreement process enables provides public input on a proposal. The development agreement approach would typically provide for such uses more broadly than Options 1 and 2, as the development agreement can establish site specific controls for licensed establishments on all lands designated commercial and industrial and on those parcels of land that permit such uses under the current zoning.

Regarding hours of operation, the NSUARB is the ultimate authority. It can impose an earlier closing time than HRM might otherwise allow through a development agreement. The Board makes a decision following its own public process, which takes place only after a municipality issues its approvals. In staff's opinion, it is both inefficient and confusing to the public to have two separate processes, each run by a different level of government, which each address operational hours. Therefore, the use of a development agreement for licensed establishments should be limited to only those parcels of land where the risk of impacts on residential areas is high. This raises the question why permit the use at all.

Once an establishment is licensed and operating, the NSUARB, as part of its license renewal process, in response to public complaints or as a result of infractions, can shorten an establishment's hours as it deems fit and place restriction on the operation such as maximum floor area. By comparison, HRM does not have the authority to amend the operating hours as set out in a development agreement without the approval of the owner. Therefore, the use of the development agreement option should be limited as it gives council no authority to intervene once a use is approved.

Conclusion

If Council determines that additional land use controls are needed to address locational and site standards for licensed establishments, staff believe that enhanced LUB provisions can address most of the concerns raised regarding licensed establishments. Should Council determine that the development agreement option is appropriate, staff would recommend it only be used for limited situations.

BUDGET IMPLICATIONS

There are no budget implications.

FINANCIAL MANAGEMENT POLICIES / BUSINESS PLAN

This report complies with the Municipality's Multi-Year Financial Strategy, the approved Operating, Project and Reserve budgets, policies and procedures regarding withdrawals from the utilization of Project and Operating reserves, as well as any relevant legislation.

COMMUNITY ENGAGEMENT

No community engagement is required since this report responds to Council's request for information and staff has not been directed to open a case or consider amendments to any planning document. If Council directs staff to open a planning case, consultation will be conducted in accordance with the Community Engagement Strategy and the Halifax Regional Municipality Charter.

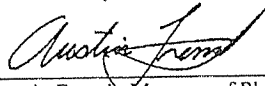
ATTACHMENTS

None.

A copy of this report can be obtained online at <http://www.halifax.ca/commcoun/cc.html> then choose the appropriate Community Council and meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

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