

SECTION 2: GENERAL INFORMATION

2.0 Introduction

Although this chapter contains “general information” as the title suggests, the topics discussed here are of great importance. They form the framework within which liquor licensing functions are performed by staff in the Liquor Control and Licensing Branch. Unlike the chapters that follow, this one is written in narrative form and does not contain any discrete policy statements. This does not mean that the material has no policy ramifications. Indeed, because they provide a framework for branch functions and, more importantly, for the liquor licensing system as a whole, these topics are the context within which all branch policy is conceived.

The topics in this chapter are organized under the headings:

- Operating Environment, and
- Licence Categories

2.1 Operating Environment

Introduction

The application of the policies and practices detailed in this manual are best understood in light of the context or “operating environment” in which staff of the Liquor Control and Licensing Branch do their work. Many different factors contribute to the current operating environment, including the history of liquor regulation in British Columbia, the scope or statutory framework of the *Liquor Control and Licensing Act* and Regulations, and the relationship the branch has with a range of different stakeholder groups.

Below, the current operating environment is described under the following headings:

- Branch Organization and Function
- Client Groups
- Operating Assumptions, and
- Operating Principles

Branch Organization and Function

Until 1973, the Liquor Control Board (followed briefly by the Liquor Administration Branch from 1973 to 1976) was responsible for all aspects of liquor control and licensing, including distribution and sales. In response to concerns that the sales and distribution functions of the branch diminished, and sometimes conflicted with, the control and licensing functions, the Liquor Control and Licensing Branch and the Liquor Distribution Branch were established as two separate organizations in December of 1976.

The Liquor Control and Licensing Branch is currently divided into four arms: Licensing and Local Government Liaison; Management Services; Compliance and Enforcement; and Policy, Planning and Communications. Staff in the Licensing and Local Government Liaison; Policy, Planning and Communications; and Management Services Divisions are located in Victoria. The Compliance and Enforcement Division maintains a small staff in Victoria, and has fifteen field offices throughout the province reporting through three regional managers, one in Surrey, one in Vancouver and one in Victoria.

As in any organization with a complex mandate and a broad range of duties and responsibilities, some of the tasks performed by branch staff are not so easily isolated or categorized. Nevertheless, seven distinct functions can be identified as being the major focus of branch efforts. These include:

- Issuing, renewing and transferring licences for the manufacture and resale of liquor
- regulating and monitoring product advertising
- administering regulatory exemptions for medicinal, toilet, confectionery, culinary, cleaning or disinfecting products containing alcohol
- inspecting and educating licensees to ensure they comply with the law
- maintaining public relations with law enforcement, local government and other regulatory agencies
- taking appropriate enforcement actions for contravention of the *Liquor Control and Licensing Act* and Regulations, and
- liaising with stakeholders to develop more effective policies and legislation.

These things the branch does in pursuit of a vision that reflects on the broader interests of communities and all people in the province, building the conditions under which there are:

Safer and healthier communities where businesses and individuals manufacture, sell, serve and promote alcohol responsibly.¹

Client Groups

An important aspect of the branch's operating environment is the relationship the branch has with a wide range of client groups. Identifying the customer of a public program can be difficult, since the intended beneficiaries of the service are often not the ones with whom the program has most direct contact.

For the Liquor Control and Licensing Branch, the direct customers or clients – that is, those who utilize, most directly, the services offered by the branch – primarily include licence applicants, licensees, and liquor manufacturers and their agents. On the other hand, their indirect clients – or those who do not utilize the branch's services but are helped indirectly by its activities – include individuals, their communities, and the general public. The latter are, of course, the intended beneficiaries of liquor regulation by government.

Operating Assumptions

Another important aspect of the branch's operating environment is the set of beliefs or operating assumptions upon which its functions are based. Often, a program's operating assumptions are only implicitly understood, but they form the reference points by which program participants carry out their duties. The beliefs or assumptions underlying different actions are usually based on facts, experience, observation, or an application of the rules that govern the program.

These assumptions differ from the organization's operating philosophy or principles (discussed under the next heading) to the extent that they do not, in themselves, form the fundamental rationale by which decisions are made. Rather, they are part of the fact pattern and organizational wisdom that builds over time and contributes to the policies, procedures and practices of the organization.

A list of operating assumptions employed by the Liquor Control and Licensing Branch are outlined below. While not an exhaustive list, they include the more influential ones for liquor licensing operations.

1. While moderate alcohol consumption may have some modest health benefits, long term excessive drinking has adverse health effects.

¹ The Branch Service Plan is a useful source of more information about the branch mission, mandate and strategic goals being employed in pursuit of this vision.

2. Alcohol is a drug that, if taken in sufficient quantities, will affect short-term mental judgment and physical dexterity.
3. Although generally seen as a pleasant complement or accompaniment to social occasions, alcohol has addictive properties and can lead to socially unacceptable behaviour when abused.
4. Minors should be protected from the negative effects of alcohol consumption.
5. Neighbourhoods and communities are impacted by the sale and manufacture of liquor and their opinions are considered in licensing decisions falling within the statutory framework set down by government.
6. Control of the number and location of liquor primary licensed establishments prevents a proliferation of licensed establishments that may lead to the sale of liquor to minors and intoxicated persons, overcrowding, or other actions that may be harmful to the community.
7. It is in the best interests of the liquor and hospitality industries to encourage responsible drinking behaviours that contribute to the well being of their customers and the public.
8. Licence holders are responsible for designing their operations and conducting their business in such a way as to realize the outcomes and principles articulated in liquor licensing statutes and regulations.

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Operating Principles: Liquor Primary and Liquor Primary Club Licences

The last, but probably the most important elements of the branch's operating environment are the fundamental principles guiding the regulation of liquor in British Columbia. Under the *Liquor Control and Licensing Act* and Regulations, the general manager has a great deal of discretion. Although there are some specific requirements about how that discretion is to be exercised, little is codified in the statute. The general manager is required to use good judgment in the "public interest". The operating principles that guide the general manager's decisions – and, by implication, branch practices – are, therefore, an expression of how the public interest is interpreted for branch purposes. They are as follows:

Public Safety

It is in the public interest to safeguard individuals and communities from the harm caused by:

- the inappropriate or reckless sale and/or manufacture of alcohol which might arise in instances of destructive competition², and
- the abuse of alcohol and other irresponsible drinking behaviour.

Regard for Community Standards

It is in the public interest to have regard for:

- the impacts of alcohol sales and manufacture, and

² Destructive competition occurs when competition is so severe that participants in the industry may be induced to act improperly or even illegally in order to gain a competitive advantage. Such competition can arise when the economic viability of establishments is threatened by oversupply.

Considerations of economic viability of existing establishments is a relevant factor in considering new liquor primary licence applications if based on the legitimate public interest of the social and economic benefits when the community as a whole derives from having a substance, such as alcohol, regulated and controlled. Economic viability of existing establishments is not relevant if considered for the benefit of those existing establishments. [Reference: Coxson Holdings Ltd. d.b.a. Toro's Neighbourhood Pub v Deputy Minister of Labour and Consumer Services and General Manager Liquor Control and Licensing Branch, BCSC No. S4640 Duncan Registry.]

- the extent to which these impacts are understood and supported by individuals and their communities.

The first of these principles, *public safety*, is aimed at two types of failure in the private market place associated with liquor sales: destructive competition and externalities. Destructive competition is described by economists as a situation that occurs when competition is so intense that participants in an industry may be induced to act improperly or even illegally in order to gain a competitive advantage. For example, without regulation, industry participants may operate at a loss for long periods. In the context of liquor regulation, these are the conditions that may lead to the sale of liquor to minors and intoxicated persons, overcrowding, or other actions that could be harmful to the community.

The other type of market failure the public safety principle is intended to address is what economists refer to as the problem of externalities or “spill-over effects”. This problem is typically characterized by a situation in which the costs are borne by others who are not part of the exchange between supplier and purchaser.³ Again, in the context of liquor regulation, it is often the individuals and communities beyond the place where liquor is bought and consumed who suffer the consequences when alcohol is abused. For example, abuse of alcohol can lead to increased domestic violence and automobile accidents in which the victims are generally third parties.

The second of the two operating principles, *regard for community standards*, addresses the need to somehow find a balance between competing interests and recognize that different communities have different requirements and standards. The rules that make up the liquor licensing system must, therefore, be tempered by a capacity to take the circumstances of the individual case into consideration. Factors considered when making liquor regulation decisions should include the impacts of alcohol manufacture and sales, risks and benefits to all clients and stakeholders, and the extent to which individuals and communities accept those risks and benefits.

Operating Principles: Licensee Retail Store, Food Primary and Manufacturer Licences

Amendments to the Act which came into force in 2002 added sections 11.1 and 11.2 which changed the role of local and First Nations governments in the general manager’s decisions whether to issue a licence of a prescribed category. The licence categories prescribed in the regulation are liquor primary and liquor primary club licences.

As discussed above, the interpretation of “public interest” in liquor primary and liquor primary club applications comprises two elements: public safety and regard for community standards. Public safety issues include concerns about service to minors, over-consumption, over-service and illicit liquor. Regard for community standards encompasses issues related to the impact of a liquor outlet on the local community including the effects of the business on traffic and congestion, effects on other nearby businesses and public institutions, and the preferences of local residents regarding the presence of liquor establishments in their neighbourhood.

Other types of liquor establishment which involve no on site consumption or on site consumption only as an ancillary activity involve different considerations which impact on the public interest. These other types of liquor outlets have a lower impact on a community. For these outlets, the legislature determined that local government or First Nation input would be limited to matters related to community standards and would be expressed through zoning bylaws. A local government or First Nation may restrict the locations of non-prescribed licensed establishments by adopting zoning bylaws which do not allow for that type of business in a particular location. They do not, however, have the authority to approve the

³ These circumstances are sometimes referred to as “the tragedy of the commons” after the story often told to illustrate the problem. The story is about an English village common area used for sheep grazing by all the village shepherds. Since no single villager owned the property and no one took responsibility for it, the land was eventually over-grazed and destroyed ... thus the term “tragedy of the commons” describing a condition in which someone or something is harmed through the lack of personal cost or consequence to the direct users of a resource or commodity.

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location of a particular licensed establishment. This authority remains with the general manager. Since the zoning bylaws deal with the community standards aspect of the public interest, the general manager must only consider the public interest in relation to public safety concerns.

The general manager's consideration of the public interest as it relates to non-prescribed licensed establishments (LRSs, food primary establishments and manufacturers) encompasses only issues of public safety which may include issues related to service to minors, over-consumption, over-service and illicit liquor. In assessing these concerns the general manager may consider:

- submissions from local government and First Nations, local residents or businesses related solely to public safety,
- evidence of community controversy about the licence application related solely to public safety;
- the applicant's compliance history; any changes in circumstances as a licensing application progresses which affect public safety issues;
- any other information the general manager considers relevant to public safety.

The general manager's consideration of the public interest as it relates to non-prescribed licensed establishments does not encompass matters related to community standards, such as:

- information about other businesses or social or recreational facilities or public buildings close to the proposed location;
- information about the economic impact on competitors and business neighbours;
- parking, loading facilities at a premise, impact on property rights, etc. (which are all dealt with by the local government or First Nation by zoning bylaws).
- local government or First Nation comments respecting community standards in relation to particular licence applications.

2.2 Licence Categories

Background

There are currently five categories of liquor licence issued by the Liquor Control and Licensing Branch. Some of the descriptive information that defines the current five-category licensing system is precisely laid out in the *Liquor Control and Licensing Act* and its accompanying regulations. Some has been developed as interpretations of the licensing provisions in the Act and regulations.

The history of liquor regulation in British Columbia shows that the different categories of liquor licence have evolved largely in response to changing public attitudes toward liquor and to changing socio-economic circumstances in British Columbia. Initially, only hotels and private clubs were licensed to sell liquor. Over time, however, communities have come to view liquor service as acceptable in a much broader range of settings.

For eighty years, the liquor licensing system was structured largely around the primary operating purpose of licensed establishments — beginning, as it did, with the licensing of hotels and private clubs in 1921. With this focus, licence classes had to be carefully categorized and defined in terms of the character of the establishments as much as the character of liquor service or sales. In 2002, the focus of liquor licensing shifted principally to the nature of liquor service and sales; determined, for the most part, by whether liquor consumption is on or off the premises, and whether or not it accompanies food.

Primary operating purpose is still a consideration, to the extent that a licence to sell liquor will only be granted if the establishment is in the business of “food or beverage service, entertainment or hospitality” as required under section 16(1.1) of the *Liquor Control and Licensing Act*. It is also a consideration in granting a licence to provide services to people making their own liquor in UBrews and UVins, and in granting a licence to manufacture liquor in wineries, distilleries, and breweries. The categories of licence

are, however, defined more by the nature of the industry — that is, the larger focus of the activity — rather than the discrete characteristics of the establishments being licensed.

A general description of each of the five licence categories follows. More information about the particular requirements or conditions that apply to the liquor primary, food primary, and licensee retail store licence classes, as well as winery endorsement areas can be found under specific topic headings in later chapters of this manual. Details about the UBrew/UVin, manufacturers, and some special licence topics⁴ are provided in other manuals or information materials maintained by the Liquor Control and Licensing Branch.

Liquor Primary Licence

The liquor primary licence is the broadest category of licence administered by the branch since establishments operating under this licence may be anything from a stand alone bar, hotel or resort to a military mess or cultural centre⁵. The nature of the liquor service in liquor primary establishments is set out in sections 8 and 9 of the regulations. A liquor primary establishment must be primarily in the business of “beverage service, entertainment or hospitality”. They must offer food and non-alcoholic beverages in addition to their liquor service, but food service in the range generally offered by a restaurant is not expected. Under section 8(2) of the regulations, restaurants and take-away food outlets are specifically ineligible for a liquor primary licence. Youth-oriented businesses, movie theatres, motor vehicles, and video games arcades are also not eligible for liquor primary licences.

The terms and conditions of the liquor primary licence, and any endorsements that may be applied to the licence, emphasize public safety and good relationships with the community in which the establishment is located. For this reason, local government or First Nations input is an important aspect of the liquor primary licensing process. Their input is sought during the application process particularly on issues relating to the establishment’s location, size, impact on the neighbourhood and surrounding community, information about demographics, and the views of nearby residents. It is also required if the licensee later applies to relocate the establishment, amend the licence to extend the hours of liquor service, increase the person capacity, or add a patio.

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A liquor-primary licence that is associated with an LRS must be of a sufficient capacity to warrant a standalone liquor-primary operation, to be open to the public for a reasonable number of hours and days per week, and to maintain a viable business in general.

Liquor Primary Club Licence

There is one sub-category of the liquor primary licence — the “liquor primary club licence”⁶. Section 1 of the Act defines a club as an organization incorporated under the laws of British Columbia that has been in continuous operation for at least one year immediately prior to application for a liquor licence. A club must have at least 50 members who pay annual membership fees of at least \$10.00. The main focus of a club must be social, athletic, recreational, fraternal, benevolent or patriotic in nature, but this does not preclude profit-making. A club has its own facilities and does not sublet food or liquor service. Under

⁴ Although seemingly a separate licence category, a Special Occasion Licence is actually a special application of the liquor primary and food primary licence classes discussed below. Information about Special Occasion Licences can be found in the Special Occasion Licence Policy Manual.

⁵ Under section 1 of the *Liquor Control and Licensing Act*, an *establishment* is defined as a “place or premises that may comply with the requirements of this Act and the regulations ...”. The Liquor Control and Licensing Branch has interpreted this section to mean that an establishment must be a physical structure, not just an open space or unbounded piece of property on which a person proposes to serve liquor.

⁶ Some “special conditions” apply to specific types of liquor primary establishments, including motor vessels, stadiums, concert halls, golf courses, and clubs. Clubs are, however, distinct in being separately defined and categorized in the Act and regulations as a separate sub-category of the liquor primary licence. Since most polices that apply to liquor primary establishments also apply to liquor primary club establishments, the term “liquor primary” also refers to “liquor primary club” throughout this manual unless otherwise specified.

section 52 of the Regulations, liquor may only be served to club members and invited guests. Guests must be registered along with the accompanying club member.

Veterans' clubs are eligible for liquor primary club licences. These currently include the following organizations:

- the Royal Canadian Legion
- Army, Navy and Air Force Veterans in Canada
- War Amputations of Canada
- The Royal Canadian Air Force Association
- a chartered branch of any of the organizations listed above
- British Ex-Servicemen's Association of Vancouver, and
- The Royal Canadian Naval Association.

Under section 29 of the Act, a chartered branch of a veterans' club is not entitled to apply for, obtain or hold a liquor licence while it is not in good standing with the central organization.

Food Primary Licence

Section 11 of the Liquor Control and Licensing Regulations requires that the emphasis of a food primary licensed establishment be the service of food⁷. Liquor may not be served unless the establishment is open for the service of a variety of menu items, including both appetizers and entrees or some equivalent. Restaurants can remain open 24 hours a day but, subject to the hours endorsed on the licence, liquor service may only be available between the hours of 9:00 and 4:00 a.m. Under section 53(3) of the Regulations, the input of local government or First Nations is required if the establishment intends to provide liquor service after 12:00 midnight. Their input is also required when patron participation entertainment is proposed.

As of December 2002, restaurants — with a capacity of 50 persons or more — may apply to have a lounge area in which patrons can obtain liquor service. The customer may or may not order food after being served liquor in a restaurant lounge, but food service must nevertheless be available to customers in the lounge. There are set limits on the seating capacity in these areas. They may be up to 20% of the person capacity of the interior areas of the restaurant to which the principal food primary licence applies, or up to 40 persons, whichever is the lesser. In some instances, a restaurant may have more than one lounge area, one inside and one outside on a patio. If both lounge areas are in use at one time, however, the total number of persons occupying these areas must not exceed the capacity limits fixed in the regulations.

In order to qualify for and maintain a food primary licence, a restaurant must have the features that distinguish it as an establishment primarily in the business of food service. General characteristics that distinguish a food primary establishment include:

- kitchen equipment suitable for preparation of menu items
- tables, chairs, counters and/or stools, and lighting adequate for dining
- adequate supply of flatware, china and other table accessories
- menu containing a varied selection of food items, including both appetizers and entrees or a similar range of offerings
- games or entertainment accompany or complement dining
- advertisements refer to the establishment as a place for dining
- hours of operation are in keeping with the dining habits of the clientele expected, and
- financial records, staff complement, and the receipts showing ratio of food sales to liquor sales are typical of an establishment in which the major focus is food service.

⁷ The definition of an *establishment* as a physical structure is also important in the licensing of food primary licensed establishments (see footnote on previous page).

The capacity to manage and control the licensed area is an important consideration in granting a liquor licence. Largely because of the complications in meeting this and other licensing requirements, some eating establishments have been identified as generally not eligible for food primary licences, including:

- mall “food fairs”, as the dining space is not defined or controlled by any single food outlet
- restaurants primarily oriented to take-out service
- stand-alone banquet rooms without fully equipped kitchens, such as a banquet room that is not an extension of a licensed restaurant, and
- mobile food providers, such as hot dog vendors.

Licensee Retail Store Licence

A licensee retail store (LRS) licence is issued to the owners of stores selling liquor for consumption off the premises. These stores were previously known as cold beer and wine stores and are now referred to as private liquor stores since they were granted permission to sell spirits on April 2, 2002. They are affiliated with hotels, pubs, resorts and night clubs that currently hold a liquor primary licence.

The acquisition of new LRS licences has been quite restricted over the years. After a lengthy period in which there was a moratorium against the acquisition of new LRS licences — between 1988 and 2002 for neighbourhood and marine pubs, and between 1992 and 2002 for hotels — new applications were briefly accepted for a period between August 12 and November 29, 2002. A moratorium is once again in place, and applications are no longer being accepted for new LRS licences.

For current LRS licensees, there are some specific requirements relating to the character of their operations. A LRS is no longer required to be at the same location as its associated liquor primary but the regulations continue to require that both establishments be owned⁸ by the same person. LRS licensees may apply to relocate their store to another location in the same local government jurisdiction, or to a location outside the local government jurisdiction that is within five kilometres of the liquor primary establishment. Generally, an application to relocate an LRS will not be approved by the general manager if the proposed site is within 0.5km of an existing LRS or the site of an LRS application in progress. However, the general manager may approve the relocation within 0.5km of another LRS in some situations including where it would not be contrary to the public interest, (e.g. a store loses their leased location due to circumstances beyond their control and the only reasonable location is within 0.5km of another store), or where there is a large barrier between the stores.

There may be more than one controlled entrance to the store, but an entrance may not be from an adjoining licensed establishment. Inside the store, there may be more than one room or level. Packaged snacks, lottery tickets, tobacco products, and liquor related items may be sold and minors, in the company of a parent or guardian, may be present. Finally, the types of liquor sold are no longer limited to beer, wine, cider or coolers, but the agreement with the Liquor Distribution Branch under which the establishment operates may limit the product range. This agreement also addresses such issues as type of product sold and empty container returns.

UBrew/UVin Licence

The UBrew/UVin licence is issued to establishments providing supplies, facilities, and/or services to people making their own wine, beer, or cider. The *Liquor Control and Licensing Act* and regulations set out a range of terms and conditions pertaining to this licence, including: the respective roles of UBrew and UVin licensees and their customers; how the customer’s ingredients and product are to be stored on the premises; and special record keeping and reporting requirements.

⁸ See further information about the operational requirements of the associated liquor-primary establishment in policy 4.5.6 “Status of a licensee retail store licence dependent upon status of associated liquor primary establishment” in 4.5 Valid Interest in an Establishment.

These terms and conditions are designed to ensure that UBrew and UVin licensees, their staff, and their customers do not become manufacturers or vendors of liquor. Rather, licensees only supply ingredients and/or assist customers through the fermentation or brewing process, so long as the end product is for the customer's own private use.

Manufacturer Licence

Wineries, breweries, and distilleries that produce or manufacture liquor for sale and, typically, for consumption off the premises, are required to have a manufacturer licence. Distillers and brewers are actually licensed to *manufacture* liquor by the government of Canada. In order to *sell* the liquor they manufacture, however, the *Liquor Control and Licensing Act* stipulates that they must also acquire a licence from the province. Wineries have similar obligations, but they must acquire the provincial manufacturer licence for both the manufacture and sale of their product.

The manufacturer licence authorizes the manufacture of liquor and the sale of the product from one on-site retail store located at the prime manufacturing site as well as to the Liquor Distribution Branch. A licensed manufacturer may also operate a tasting room at the manufacturing site where product samples may be offered to the public.

In addition to operating a retail store and tasting room, manufacturers of wine can apply for endorsements to operate a lounge and/or separate areas designated for special events, picnics and winery tours. Under section 18.1(4) of the Regulations, liquor may be purchased by the bottle or the glass from a winery lounge, special event area or onsite retail store and consumed in any endorsement area.⁹

⁹ See further information about consumption in winery lounges, special event, picnic, tour area and sampling rooms in Management and Control of a Licensed Establishment, General Consumption.

[Liquor Control and Licensing Act, sections 6(c) and 21(3); Liquor Control and Licensing Regulations, section 7; Liquor Control and Licensing Branch Policy]

4.4.5. Relocation of a licensee retail store

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Licensee Retail Store (LRS) licensees may apply to relocate their store to another location in the same local government jurisdiction, or to a location outside the local government jurisdiction that is within five kilometres of the associated liquor primary establishment.

Applications to relocate a LRS made on or after May 14, 2004 will not be approved by the general manager if the proposed site is within 0.5 km of an existing LRS or the site of an LRS application in progress. Applications to relocate made prior to this date are not subject to this policy. Licensees with relocation applications currently in progress who decide to seek a different location for their LRS will be required to apply for a new LRS location or revert to the location of their original LRS application. If they choose to apply for a new location, the relocation application will be subject to the distance criterion of 0.5 km.

Notwithstanding the above, the conditions under which the general manager may approve the relocation of an LRS to a location within 0.5 km of another LRS include but are not limited to the following circumstances:

- Where it would not be contrary to the public interest, e.g. a store loses their leased location due to circumstances beyond their control and the only reasonable location is within 0.5 km of another store; or
- Where there is a large natural or artificial barrier between the stores, e.g. a river or divided highway.

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LRS licensees and applicants are permitted a maximum of two relocation applications without building unless otherwise approved by the general manager.

[Liquor Control and Licensing Regulations, section 14(3) and 14(5) and Liquor Control and Licensing Branch Policy]

4.4.6. Relocation of a liquor primary establishment

The general manager may approve an application to relocate a liquor primary establishment provided the proposed new location:

- is within the same community as the existing establishment; and
- is within a reasonably close distance from the existing establishment

and meets site and community assessment requirements in policy 4.4.3.

A community is not necessarily synonymous with the same local government or First Nation jurisdiction. In general, to meet the requirement of “same community,” the relocation will be within the publicly recognized area in which the establishment is already located (e.g. the commercial core of a town or within a residential neighbourhood).

In determining whether the proposed location is within a “reasonably close distance”, the general manager will consider whether the location is within comfortable walking distance from the existing establishment.

[Liquor Control and Licensing Regulations, section 8(4) and Liquor Control and Licensing Branch Policy]

Authority References

Liquor Control and Licensing Act, sections 6(c), 16(3), and 21(3); Liquor Control and Licensing Regulations, sections 7, 8(4) and 14(5); Liquor Control; Licensing Branch Policy.

4.5 Valid Interest in an Establishment

Policy Rationale

Public interest concerns that liquor licence applications are dealt with through a fair and transparent process, and considerations of applicant suitability, are the roots of the policies governing valid interest in an establishment.

As discussed in the earlier sections “Legal Name/Internal Ownership Changes” and “Change in Ownership or Sale of a Licensed Establishment”, a liquor licence is linked both to the licensee personally and to the establishment physically. Section 16(1)(b) of the *Liquor Control and Licensing Act* requires, as one feature of applicant suitability, that the applicant be the owner of the business carried on at the establishment for which the licence is sought. In addition to requiring ownership of the business, section 16(1)(c) of the Act requires that the applicant have a valid interest in the establishment, by prohibiting the granting of a licence to a person who is not either the owner or the lessee of the establishment. Section 4(1) of the Liquor Control and Licensing Regulations further clarifies that the person must be either the owner of the establishment or hold a 12-month lease for it.

In other words, a liquor licence applicant must be both the owner of the business and the owner or lessee of the establishment at which the business is carried on. Together, these two elements constitute valid interest in an establishment.

Under sections 17(1) and (2) of the Act, another person must not use a licence without the general manager’s approval. The general manager has approved lease or management arrangements with third parties, typically in recognition of the complexities of management in large, multi-use facilities such as hotel resorts, stadiums, recreation centres, or wineries. In any event, the statutory requirements that the licensee both own the business and own/lease the property must be met.

The following policies focus on the requirement to provide documentary evidence of valid interest in the property and on the process and documentation required for approval of a lease or management contract with third parties.

Policies

4.5.1. Establishment ownership or leasehold

A licence shall not be issued, renewed or transferred to a person who, in the general manager’s opinion, is not the owner or lessee of the establishment or portion of the establishment to be licensed. Prior to issuing, renewing or transferring a licence, the general manager may require that appropriate documents be provided as evidence of:

- ownership of the establishment, or
- a lease that does not expire for at least twelve (12) months after the date of issue or transfer of the licence.

Valid interest in a property may include percentage rent or profit sharing agreements within a lease, sub-lease or assignment of lease.

Loss of valid interest in the establishment is reason for the general manager to consider cancelling the licence.

[*Liquor Control and Licensing Act*, section 16(1)(c); Liquor Control and Licensing Regulations, sections 4(1) and 4(2); Liquor Control and Licensing Branch Policy]

4.5.2. Disputes regarding the validity of a lease

In the event of a dispute between a lessor and lessee as to the continuing validity of a lease, the general manager will require the disputing parties to obtain a court order to determine whether the lease is null and void despite the terms on the face of the lease.

[Liquor Control and Licensing Branch Policy]

4.5.3. Documents in the name of the licensee

Evidence of valid interest in the property as specified in policy 4.5.1 will be in exactly the same name as the person(s) or corporation to whom the licence has been or will be issued.

[Liquor Control and Licensing Branch Policy]

4.5.4. Proof of valid interest in property during licensing process

Prior to licensing, the general manager may require an applicant to demonstrate valid and continuing interest in the property at each approval stage of the licensing process.

[Liquor Control and Licensing Branch Policy]

4.5.5. Management contracts with third parties

A licensee shall not allow another person to use his licence without having first obtained the written approval of the general manager. The general manager may approve a management contract for the operation of:

- liquor primary establishments, other than liquor primary clubs
- food primary establishments,
- licensed winery lounges, special event areas, picnic, or tour areas, or
- licensee retail stores

provided the terms and conditions of the licence are met and provided the licensee continues to be accountable for the overall operation of the facility of which the licensed area is a part.

[*Liquor Control and Licensing Act*, section 17(1) and (2); Liquor Control and Licensing Regulations, section 4(1); Liquor Control and Licensing Branch Policy]

4.5.6. Status of a licensee retail store licence dependent upon status of associated liquor primary establishment

In the event that the associated liquor primary establishment no longer meets the criteria for licensing or ceases to operate the associated LRS licence will be cancelled.

A liquor-primary licence that is associated with an LRS must be of a sufficient capacity to warrant a standalone liquor-primary operation, to be open to the public for a reasonable number of hours and days per week, and to maintain a viable business in general.

[Liquor Control and Licensing Branch Policy]

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Authority References

Liquor Control and Licensing Act, sections 16(1)(c), 17(1), and 17(2); Liquor Control and Licensing Regulations, sections 4(1) and 4(2); Liquor Control and Licensing Branch Policy.

4.6. Dormant Liquor Primary Licences

Policy Rationale

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With the exception of a liquor-primary licence associated with a licensee retail store¹⁵, there are no minimum use requirements for liquor licences. Consequently, licensees may continue to hold liquor licences even if their establishments cease operation for reasons such as fire damage or financial difficulty. These inactive licences are referred to as “dormant liquor licences”.

Although dormant liquor licences remain subject to the same legislative and policy requirements as active licences, there are potential negative impacts associated with dormant liquor primary establishments. For example, since the regulations require that consideration be given to the number and density of existing liquor primary licensed establishments when deciding whether to approve a liquor primary licence for a particular location, the existence of a dormant licence could contribute to the denial of a new licence application. Additionally, dormant establishments may reopen in areas that experienced a change in community standards during the dormancy, resulting in complaints from residents who did not know or had forgotten that the establishment was in their neighbourhood.

The identification and monitoring of dormant liquor primary licences therefore assists in meeting the general manager's statutory obligations to consider the public interest when renewing liquor licences under section 16(3) of the *Liquor Control and Licensing Act*, and to supervise all licensed establishments in the province under section 6(3) of the Act.

Policy

4.6.1. Definition of dormant licence and application of policy

Dormant licence means a liquor licence held by an establishment (other than a seasonally-operated establishment) which is closed all or most of the time, and which may or may not reopen for business in the future. Policies directing that these establishments be reported and monitored will apply only in respect of liquor primary licensed establishments.

[Liquor Control and Licensing Branch Policy]

4.6.2. Compliance with the Act, regulations, and terms and conditions of the licence

If an establishment ceases operation but continues to hold a liquor licence, it must continue to comply with the *Liquor Control and Licensing Act* and regulations, and the terms and conditions of that licence. The establishment cannot operate as another business during the time the licence is dormant. When a dormant licence is suspected, a compliance and enforcement officer will verify that the establishment is closed and determine if it is in compliance with the Act, regulations, and terms and conditions of its licence.

[*Liquor Control and Licensing Act*, sections 16(1)(d) and 20(1)(a)]

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¹⁵ See Policy 4.5.6 “Status of a licensee retail store licence dependent upon status of associated liquor primary establishment” in 4.5 Valid Interest in an Establishment.

4.6.3. Reporting and monitoring dormant licences

Compliance and enforcement officers will report all dormant liquor primary licences to the Licensing Division. Once verified, all dormant licences will be assigned a "dormant" status on the branch database. Should an establishment again re-open or show signs of regular business activity, compliance and enforcement officers will notify the Licensing Division of changes to the dormant status of the establishment.

[Liquor Control and Licensing Branch Policy]

4.6.4. Dormant Liquor-Primary Establishments with a Licensee Retail Store licence

A liquor primary licensee whose establishment is dormant is subject to the following policies with regard to their licensee retail store (LRS) licence.

When an LRS is already licensed but the associated liquor primary licence is dormant due to major renovations, and/or catastrophic event, the liquor primary licensee has twelve (12) months from the date their liquor primary licence is placed in dormant status to provide evidence that their liquor primary is open for business.

The liquor primary licensee may request an extension of time by writing to the general manager. The general manager will consider the request, provided

- the request is reasonable
- the delays giving rise to the request are beyond the applicant's control, and
- where a third party is responsible for the delay, a letter from the third party outlining the current status and schedule for completion should accompany the request for extension.

The onus for obtaining an extension is on the applicant. The extension request must be received by LCLB at least thirty (30) days prior to the expiry of the twelve (12) month approval period. The LRS licence will be suspended at the end of the twelve-month period if an extension has not been approved. Once an LRS licence is suspended under these circumstances, it will remain suspended as long as the liquor primary licence remains dormant. If the liquor primary licence is subsequently cancelled, the LRS licence will be cancelled.

[Liquor Control and Licensing Branch Policy]

Authority References

Liquor Control and Licensing Act, sections 16(1)(d) and 20(1)(a); Liquor Control and Licensing Branch Policy.

SECTION 5: HOURS OF OPERATION

5.0 Introduction

The hours during which a licensed establishment can sell or serve liquor is a key consideration at the time of licensing and later, as a condition of licensing, it continues to be monitored as long as the licence is in effect. In addition to the specific details about hours of sale, discussion of this topic also provides a particularly good illustration of the site and community assessment factors the general manager and local government or First Nations must consider in exercising discretion.

This chapter includes the following sections:

- Hours of Sale
- Special Events, and
- Alternate Use.

5.1 Hours of Sale

Policy Rationale

The hours during which a licensed establishment is open for the sale of liquor is one of the factors having a significant impact on the surrounding residents and businesses in a community. For this reason, particular attention is paid to hours of sale both in the legislation guiding liquor licensing and in the way the general manager exercises discretion in this area.

The hours of sale for liquor primary establishments, food primary establishments, and licensee retail stores are set by regulation in sections 9(b), 11(2)(c), and 14(1)(b) of the Liquor Control and Licensing Regulations.¹ The hours of sale for winery lounge and special event areas endorsements are set by regulation in section 18(3) and winery picnic and tour area endorsements by section 18.1(8). Each of the applicable provisions contains the words “subject to limitation by the general manager”. Additionally, under section 12(3)(c) of the Liquor Control and Licensing Act, the general manager has the authority to impose terms and conditions that “limit the days and hours that an establishment is permitted to be open for the sale of liquor” if such limitations are in the public interest. The operative word in both sections 12(3)(c) of the Act and the relevant sections of the regulations is “limit” – the general manager may limit, but not expand the number of hours during which an establishment may sell liquor beyond that specified in the regulations.

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Under section 12(2) of the Liquor Control and Licensing Act the general manager has the authority to impose terms and conditions that are in the public interest on any licence. It is under this authority that the general manager may establish minimum operating requirements for a specific category of licence².

¹ See table entitled ‘Hours of Sale by Licence and Establishment Type’ for the duration and maximum hours of sale applying to each licence class and type of establishment, the specific reference in the regulations, and any restrictions set by the general manager.

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² See Policy 4.5.6 “Status of a licensee retail store licence dependent upon status of associated liquor primary establishment” in 4.5 Valid Interest in an Establishment.

Other important words in section 12 of the Act are contained in the phrase “in the public interest” – the terms and conditions imposed by the general manager must be done in light of the pertinent public interest considerations. Section 53(4) of the regulations sets out three specific public interest criteria a local government or First Nation must take into account in providing comments to the general manager in respect of an application to extend the hours of a licensed establishment. These are: the potential for noise if the application is approved; the impact on the community if the application is approved; and, if in relation to a food primary establishment, whether the hours of liquor service may result in the establishment being operated in a manner that is inconsistent with an establishment primarily engaged in the service of food. Additionally, there is a range of other public interest factors established by branch policy that the general manager may also consider.³

For the most part, the considerations here are the same as those relating to community characteristics and impact examined during the initial licensing process.⁴ It is through consideration of these factors, therefore, that the unique circumstances of the individual case can be accommodated and the best “fit” found between the licensed establishment and the community in which it conducts its business.

The policies below stipulate both the nature of these public interest considerations and the general authority guiding the days and hours of sale for licensed establishments. Additionally, there are policies setting out the requirements for temporarily or permanently changing opening or closing hours. The table “Hours of Sale by Licence and Establishment Type” at the end of this section shows the hours of sale and any general manager’s limitations for a specific category of licence or type of establishment. The table outlines policy as it is generally applied; however, application may vary depending on the individual circumstances of each licence.

Policies

5.1.1. General conditions in setting the hours of sale

Subject to a limitation by the general manager in the licence, the days and hours an establishment is permitted to be open for the sale of liquor shall be those established by regulation.⁵

[*Liquor Control and Licensing Act*, section 12(3)(c); Liquor Control and Licensing Regulations, sections 9(b), 11(2)(c), 14(1)(b), 18(3), and 18.1(8)]

5.1.2. Factors considered in the public interest in setting the hours of sale

The general manager may impose, in the public interest, terms and conditions that may limit the days and hours an establishment is permitted to be open for the sale of liquor. In determining the days and hours of liquor service, for new and existing licences, the factors considered will include those considered by a local government or First Nation in relation to a licence amendment respecting hours of liquor service⁶ as follows:

- the potential for noise if the application is approved
- the impact on the community if the application is approved, and
- if a food primary establishment, whether the amendment concerning the hours of liquor service may result in the establishment being operated in a manner that is contrary to its primary purpose and, therefore, inconsistent with an establishment primarily engaged in the service of food.

³ See policy 5.1.2, below.

⁴ For a fuller discussion of the principles that guide the general manager’s decision making in the public interest, see the section on Operating Environment in the General Information chapter and later in the chapter on Licensing Process.

⁵ See table entitled ‘Hours of Sale by Licence and Establishment Type’ for the duration and maximum hours of sale applying to each licence class and type of establishment, the specific reference in the regulations, and any restrictions set by the general manager.

⁶ See related policies under 3.5 Licence Amendments in chapter 3, Licensing Process.

- Additional factors that may be considered in the public interest include:
- location of the licensed establishment
- hours of operation applying to nearby licensed establishments
- ability of the police to supervise the establishment, particularly at closing time
- availability of public transit options, such as taxis and buses
- licensee's compliance history, and
- establishment's history of compliance.

[*Liquor Control and Licensing Act*, section 12(3)(c); Liquor Control and Licensing Regulations, section 53(4); Liquor Control and Licensing Branch Policy]

5.1.3. Application of licence amendment policy in temporary or permanent changes to opening or closing hours

Both temporary and permanent changes to opening or closing hours require an amendment to a liquor licence. An application for a change involving:

- an extension of hours of liquor service at a liquor primary, liquor primary club, or winery lounge or special event area, or
- hours of liquor service at food primary establishment ending after 12:00 a.m.

will comply with the regulations and policy for notifying and considering comments from a local government or First Nation, as specified for a licence amendment.⁷

[Liquor Control and Licensing Regulations, section 53.]

5.1.4. Temporary and permanent changes to opening or closing hours⁸

On application by the licensee, and in consideration of policies 5.1.1 through 5.1.3, the general manager may either temporarily or permanently amend the term and condition of a licence respecting hours of sale in order to:

- increase or change the hours of sale to a later closing time,
- increase or change the hours of sale to an earlier opening time, or
- set different hours of sale on different days of the week.

[*Liquor Control and Licensing Act*, section 12(3)(c); Liquor Control and Licensing Branch Policy]

5.1.5. Expiration of approval for temporary change in hours of sale

Temporary changes in the hours of sale are limited to a twelve (12) month or lesser period. At the expiration of this time period, or at any time prior to this date if the general manager considers it to be in the public interest, the hours of sale will revert back to those that applied prior to the change. Prior to or on the expiration of the time period during which the temporary change is in effect, a licensee may apply for a permanent change in the hours of sale.

Two or more consecutive temporary changes may be considered, provided the term is a reasonable time period in which to assess the impact of the change⁹, and provided the total time in which the temporary changes in hours are in effect does not exceed twelve months.

[*Liquor Control and Licensing Act*, section 12(3)(c); Liquor Control and Licensing Branch Policy]

⁷ See applicable policies in 3.5 Licence Amendments.

⁸ See related policy for temporary changes to opening or closing hours under Special Events in this chapter.

⁹ For example, a series of one-month extensions would not be considered.

5.1.6. Variation of hours in areas specified by a local government or First Nation

At the request of a local government or First Nation, and in consideration of the relevant public interest factors in policy 5.1.2, the general manager may vary the days and hours establishments are permitted to be open for the sale of liquor throughout an area specified by the local government or First Nation.

[*Liquor Control and Licensing Act*, section 12(3)(c); Liquor Control and Licensing Branch Policy]

5.1.7. Hours of operation on the night of a time change

On the night of a time change (i.e., the first Sunday in April and the last Sunday in October) a licensee must wait to change clocks forward or back until after the normal business day has ended. Specifically, a liquor-primary licensee and a winery lounge or special event area licensee must adjust their clocks after the close of business when all patrons have cleared the establishment. A food-primary licensee must not adjust their clocks until after liquor service has ended for the day and liquor has been removed from all patrons' tables.

[Liquor Control and Licensing Regulations, section 44(5); Liquor Control and Licensing Branch Policy]

Authority References

Liquor Control and Licensing Act, section 12(3)(c); Liquor Control and Licensing Regulations, sections 9(b), 11(2)(c), 14(1)(b), 18(3), 18.1(8), 44(5) and 53; Liquor Control and Licensing Branch Policy.

Hours of Sale by Licence and Establishment Type

Licence and Establishment Type

Hours of Sale

Liquor Primary and Liquor Primary Club Establishments

General Conditions:

- hours between 9 a.m. and 4 a.m. of the next day [regulation section 9(b)]
- the establishment must be cleared of patrons within one-half hour after the time stated on the licence for the hours of liquor service [Regulation section 44(1)(a)]
- If associated with an LRS must be open to the public for a reasonable number of hours and days per week.

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Food Primary Establishments

• **All Establishments**

General Conditions:

- hours between 9 a.m. and 4 a.m. of the next day [regulation section 11(2)(c)]
- liquor must be taken from patrons within ½ hour after the time stated on the licence for the hours of liquor service, unless the liquor is an unfinished bottle of wine that is sealed by the licensee for the patron [regulation section 44(1)(b)]

Limitations set by General Manager:

- hours of sale limited to 12:00 midnight closing unless the licensee applies for and acquires a licence amendment, following appropriate local government/First Nation input as established by regulation and branch policy

Licencee Retail Store Establishments

• **All Establishments**

General Conditions:

- between 9:00 a.m. and 11:00 p.m. [regulation section 14(1)(b)]

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Winery Lounges and Special Event Areas

• **All Establishments**

General Conditions:

- hours between 9 a.m. and 4 a.m. of the next day [regulation section 18(3)]

Winery Tour and Picnic Areas

• **All Establishments**

General Conditions:

- hours between 9 a.m. and dusk
dusk is defined as the period immediately following sunset [regulation section 18.1(8)]

5.2 Special Events

Policy Rationale

As mentioned in the previous section, the hours of sale for a licensed establishment are specifically set by regulation, and any limitations imposed by the general manager on these hours are expressed as a term and condition of a licence. Under normal circumstances, the hours of sale are fixed for as long as the licensed establishment is in operation. For special circumstances or events, however, the general manager may exercise some discretion in this area.

One example of this is the policy to permit a licensed establishment to “... have extended hours of sale on December 31 until 4:00 a.m. on January 1, on the condition that food is available to patrons”.¹⁰ Establishments not providing food must close their liquor service at the usual closing hour stated on their licence.

Staff parties may also be an occasion on which licensees will want to have extended hours of operation. The policy below confirms that, provided a licensee can comply with the regular terms and conditions of their licence — and can keep within their regular hours of operation — for the duration of the party, a staff party may be held in the licensed establishment without any special arrangements or permission to do so. Licensees are reminded, however, that staff may not drink alcoholic beverages while on duty.

On the other hand, if the licence terms and conditions cannot be complied with during the staff party, the licensee must apply for a temporary suspension of the licence. During the time specified for a staff party, the liquor licence is effectively suspended under the authority provided in section 23(1) of the Act. In its place, a private special occasion licence, taken out by the licensee, is in effect for the duration of the party.

A licensee may also apply to the branch for a temporary suspension of the licence to hold a public or private special event hosted by the licensee or someone else. In either situation, a suspension for a food primary may be for less than 24 hours while a suspension for a liquor primary must be for a 24-hour period. The terms and conditions for events held in a licensed establishment are discussed in the policies below. Comprehensive information on special occasion licences is contained in the Liquor Control and Licensing Branch Special Occasion Licence Policy Manual.

Policies

5.2.1. Extension of hours on New Year’s Eve

A licensed establishment may have extended hours of sale on December 31 until 4:00 a.m. on January 1, regardless of normal closing hour, (on the condition that food is available to patrons)¹¹, unless the general manager has directed otherwise, or local bylaws prohibit it.

[*Liquor Control and Licensing Act*, section 12(3)(c); Liquor Control and Licensing Branch Policy]

5.2.2. Conditions for staff parties

A licensee may hold a staff party in their licensed establishment, provided they can comply with the regulations, terms, and conditions of their licence for the duration of the party. If the regulations, terms, and conditions of the licence cannot be complied with, the licensee must apply for the temporary suspension of their licence and obtain a special occasion licence to hold the party.

¹⁰ See related policy under Pricing in the chapter on Liquor Service and Sales.

¹¹ See related policy about food and liquor service requirements on New Year’s Eve under Pricing in the chapter on Liquor Service and Sales.

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Under section 12(2) of the Liquor Control and Licensing Act the general manager has the authority to impose terms and conditions that are in the public interest on any licence. It is under this authority that the general manager may establish a minimum capacity requirement for a specific category of licence⁶.

The presence of a licensed establishment may have significant impacts upon nearby residents and businesses. A local community will be concerned with parking and traffic flows, and with any noise or nuisance issues that may arise with particular premises or types of establishments. Because of the implications capacity can have for a local community, sections 10(3) and 53(4) of the regulations stipulate that a local government or First Nation must take these issues into account in considering the person capacity of a liquor primary establishment or a winery lounge or in the case of a winery special event area the size of that area. There are, in addition, a range of other factors the general manager may consider in the public interest — largely those factors which address the licensee’s ability to comply with the terms and conditions of the licence.

The policies below detail these considerations as well as the technical requirements of setting person capacity for new and existing licences. They also outline the way in which licence amendment policies apply in respect of temporary or permanent changes in person capacity.⁷

Policies

6.3.1. General considerations in setting person capacity

The general manager must set the person capacity⁸ for liquor primary, liquor primary club, and food primary licensed establishments and winery lounges and interior special event areas⁹. The person capacity of a licensed establishment shall be equal to the occupant load of the establishment, which is the least of the number of persons permitted in the establishment¹⁰ determined under:

- the Provincial building regulations
- the *Fire Services Act* and British Columbia Fire Code Regulation, and
- any other safety requirement enacted, made or established by the local government or First Nation for the area in which the establishment is located.

[Liquor Control and Licensing Regulations, sections 1 and 6; Liquor Control and Licensing Branch Policy]

6.3.2. Factors considered in the public interest in setting person capacity

In setting the person capacity of a licensed establishment, for new and existing licences, the factors considered will include those considered by a local government or First Nation in relation to a licence amendment¹¹ as follows:

- the potential for noise if the proposed person capacity is approved, and
- the impact on the community if the proposed person capacity is approved.

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⁶ See Policy 4.5.6 “Status of a licensee retail store licence dependent upon status of associated liquor primary establishment” in 4.5 Valid Interest in an Establishment.

⁷ See related discussion and policy under 3.5 Licence Amendments.

⁸ The term “person capacity” is defined in section 1 of the Liquor Control and Licensing Regulations as “... the maximum number of persons allowed by the general manager in the establishment”.

⁹ The capacity is generally not specified for licensee retail stores, winery tour and picnic areas, because of the nature of these establishments or endorsement areas.

¹⁰ In other words, although the authorities in the bulleted list below may arrive at different figures for the number of persons that should be permitted in the licensed establishment, the occupant load shall be the lesser of all these figures.

¹¹ See related policies under 3.5 Licence Amendments in chapter 3, Licensing Process.

Additional factors that may be considered in the public interest include:

- whether the number of persons implied by the capacity figures allows the licensee to maintain effective management and control of the licensed area
- location of the licensed establishment
- capacities of nearby licensed establishments
- licensee's compliance history, and
- establishment's history of compliance.

[Liquor Control and Licensing Regulations, section 53(4); Liquor Control and Licensing Branch Policy]

6.3.3. Application of licence amendment policy in temporary or permanent changes to capacity

Both temporary and permanent changes to capacity¹² require an amendment to a liquor licence. An application for a change involving an increase in the patron or person capacity of a liquor primary, liquor primary club, a winery lounge, or in the case of a winery special event area an increase in the size of that area, must be in compliance with the regulations and policy for notifying and considering comments from a local government or First Nation, as specified for a licence amendment.¹³

Applications from licensees or applicants:

- holding a liquor primary licence, liquor primary club licence, or a winery licence with a winery lounge endorsement immediately prior to December 2, 2002, or
- preliminary site and applicant approval for a liquor primary licence, liquor primary club licence, or a winery licence with a winery lounge endorsement immediately prior to December 2, 2002

applying on a one-time basis to increase the person capacity of an establishment up to the occupant load of the establishment are not required to provide notice to a local government or First Nation, provided there is no structural change or enlargement of the establishment. A structural change or enlargement resulting in a change to the free space within a licensed area will be treated as an application for a structural alteration¹⁴ and not an application for a change in person capacity.

The general manager, in deciding whether to approve a request for a temporary or permanent change to capacity, will consider the same factors as are considered in reviewing the plans and setting person capacity in an original licence application.¹⁵

[Liquor Control and Licensing Regulations, sections 53 and 54; Liquor Control and Licensing Branch Policy]

6.3.4. Temporary and permanent changes to person capacity

On application by the licensee, and in consideration of policies 6.3.1 through 6.3.3, the general manager may either temporarily or permanently amend the term and condition of a licence respecting the person capacity of the licensed establishment in order to:

- increase the person capacity, up to a figure that is equal to the occupant load of the licensed establishment, or

¹² Temporary or permanent capacity changes would include those in which licensees apply to have *patron* capacity figures replaced with *person* capacity figures.

¹³ See applicable policies in 3.5 Licence Amendments.

¹⁴ See related policies under the previous section of this chapter, 6.2 Structural Alterations.

¹⁵ See policies 3.4.3 through 3.4.5 of 3.4 Building Assessment and Issue of a Licence.