



City of Richmond

Report to Council


To: Richmond City Council **Date:** January 12, 2006
From: Amarjeet S Rattan **File:** 05299230
 Manager, Chief Licence Inspector
Re: Deroye Enterprises Ltd. dba: Green Element Dining & Lounge – Licence Cancellation

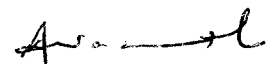
Staff Recommendation

That Council cancel the business licence of Deroye Enterprises Ltd. operating as Green Element Restaurant, at 8788 McKim Way-Unit # 2170, Richmond, B.C., for the following reason(s):

Over a nine month period, this business was cited with 17 contraventions of the Liquor Control and Licensing Act and Regulations, resulting in monetary fines totalling \$29,500 and eventual cancellation of their Food Primary liquor licence. In addition, this business has received two Municipal Ticket Informations, (MTI's) from the City of Richmond, under the Public Health Protection Bylaw No 6989, sec 6.1.1.1(a) to (k), operator permitting smoking. As well, by chaining and locking the gates to common area fire escape corridors, ostensibly to prevent inspection of the business premises by authorities, this business has seriously endangered public safety.

By violating the Liquor Control and Licensing Act and Regulations and the Public Health Protection Bylaw, this business has also violated the Business Regulations Bylaw No. 7538 and Business Licence Bylaw No. 7360, whereby, failing to comply with any provisions of any Bylaw or applicable statute, is also a violation of these Bylaws, by failing to maintain the standard of qualification required for the issuance of their Business Licence.


 Amarjeet S Rattan
 Chief Licence Inspector
 (4686)

FOR ORIGINATING DEPARTMENT USE ONLY			
ROUTED TO:	CONCURRENCE	CONCURRENCE OF GENERAL MANAGER	
Law	Y <input checked="" type="checkbox"/> N <input type="checkbox"/>		
REVIEWED BY TAG	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	REVIEWED BY CAO	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>

Staff Report

Origin

The City of Richmond continues to enforce its Business Licence bylaws and Public Health Protection bylaws with an emphasis on the operating hours and permissive functions within the business complex. This enforcement is part of our continuous effort to promote community, customer and employee safety and to ensure that all businesses are operating in a consistent manner so as to prevent one business gaining an unfair operational advantage over another business in the same business category.

This report will deal with, **Deroye Enterprises Ltd.** doing business as, and herein after referred to as **Green Element Restaurant**, at **8788 McKim Way-Unit # 2170**, Richmond, B.C.

Analysis

Roger Chen has been licenced in the City of Richmond since June 09, 2005, operating as Green Element Restaurant. Recent information received from the Liquor Control and Licensing Branch shows the business is registered as Deroye Enterprises Ltd. dba: Green Element Dining & Lounge.

BC Corporate Search done on November 21, 2006, shows the last annual report was filed by this company on November 24, 2005. Current information indicates that Deroye Enterprises Ltd. is active, showing Directors as Roger Yun-Chi Chen; Ken Ke Tang; and Anson Qiang Mai. for this company operating as Green Element Restaurant and here in after referred to as Green Element

The Business Licence issued to Green Element is an Assembly Use Group 1(A1), for food service with a Food Primary liquor licence. This allows liquor service, but the predominant focus of the business must be food service. This premise is not a liquor primary establishment whereby, they are not the holders of a liquor primary liquor license, issued by the Liquor Control and Licensing Branch or a City of Richmond licence for liquor service, which would permit liquor only service.

On November 22, 2006, a Show Cause Hearing was held in front of the Chief Licence Inspector. Present were:

Mr. Roger Chen, the principal owner of **Green Element Restaurant**,

Mr. John Chen, Father of Mr. Roger Chen,

Mr. Eddy Chen, Cook and Manager,

Mr. Michael Chen, Translator,

Cpl. Brian Edwards of the Richmond City RCMP detachment,

Mr. Lee Murphy, Regional Manager, Compliance & Enforcement Division of LCLB,

Mr. Doug Dyck, Liquor Inspector, LCLB,

Mr. Victor Duarte, City Business Licence Inspector.

The following is an account of the information presented at the Show Cause Hearing:

Information received from Liquor Inspector, Doug Dyck included a October 05, 2006 Notice Of Enforcement Action by Liquor Control and Licensing Branch (attached) which noted that Green Element received a contravention notice on February 25, 2006, less than 3 months after initially receiving their Liquor License, for failing to clear liquor within ½ hour beyond liquor hours.

Further inspections conducted on April 9, 2006, ; May 13, 2006; May 19, 2006 and June 18, 2006 also found this business failed to clear liquor within ½ hour beyond liquor hours. As a result, a total of 14 contraventions of the Liquor Control and Licensing Act and Regulations were issued to Green Element.

The Liquor Control and Licensing Branch held a hearing on September 13, 2006 and released decision on September 27, 2006. That decision detailed a total of \$29,500.00 in liquor violation penalties incurred in the 5 month period from February – June, 2006. Green Element was ordered to pay these fines by October 17, 2006.

On October 1, 2006, a few days after the release of this LCLB decision, another inspection was conducted at Green Element by Richmond RCMP and LCLB. Green Element was again found to be in violation of liquor and business licence requirements and regulations. An information summary of this inspection was provided by Inspector Dyck (attached).

In a October 5, 2006 Notice of Enforcement Action, Inspector Dyck also notes: "The licensee's compliance history, along with its cavalier response following the September 27/06 decision, makes it obvious that the licensee will not comply to the conditions on its licence. Further more, the manner under which the licensee arranges its business practices, namely stationing 'look outs' and having patrons call up before being permitted entry, prevents the general manager (LCLB) from properly supervising the establishment and carrying out her mandate to ensure public safety."

Liquor Inspector Dyck also provided a September 12, 2006 'complaint letter' (attached), signed by 12 Business and Strata Owners of Cosmo Plaza Mall where Green Element is located. The letter refers to various safety issues and alleged misconduct of Green Element clientele and staff. Complaints refer to problems such as customers urinating and vomiting in common areas, breakage of glass, vandalism, gang fights and intimidation of other business owners.

As a result of Green Element not having paid the \$29,500 LCLB fines by October 17, 2006, the LCLB cancelled the Food Primary liquor licence for the establishment. (Oct. 30/06 Notice of Enforcement Action attached.) As of January 12, 2006 these fines remain unpaid.

Information was also received from Cpl. B. Edwards of the Richmond RCMP detachment. At least 6 attendances were made by RCMP to Green Element between April – October, 2006. One attendance was as a result of a stabbing which occurred just outside premise at approximately 01:45 hrs on April 08, 2006. According to Cpl. Edwards, "stabbing occurred outside door of Lounge at an unknown time. Appears to have been delay in contacting police to clean crime scene. Likely source of water, in otherwise closed mall, would be Green Element. Subject sustained severe injuries but survived. Little cooperation from those at scene." In Cpl. Edwards

opinion, Green Element is “a dangerous operation” with a “significant violation history” and one that has required excessive amounts of enforcement resources. (RCMP Information attached.)

Victor Duarte, City Business Licence Inspector observed that there are three sets of fire escape corridors from the main floor courtyard to the streets with gates at each entry. These gates are locked with chains and padlocks at night while Green Element Restaurant remains open for business. This is a serious safety issue, which has the potential for serious consequences. Green Element has been advised by Inspector Duarte to keep fire escape gates open during evening business hours, but gates continued to be locked.

According to RCMP, LCLB and the City Business Licence Inspector this practise of padlocking the gates appears to be only to prevent authorities from gaining access to business while knowingly violating liquor and business licence requirements and regulations.

Inspector Duarte also provided photos taken at Green Element during a joint RCMP /LCB inspection of May 13, 2006. According to Inspector Duarte, these photos illustrate typical business practice of Green Element operating like a liquor primary establishment, while permitting patrons full smoking privileges inside premise. Inspector Duarte also stated that the owners had installed a blower on ceiling to pull smoke out of establishment. (Business Licence Inspector information and photos attached.)

Mr. John Chen stated that the many problems at the Green Element were due to his son’s “inexperience” and cultural misunderstandings and stressed that they are very sorry. Mr. Eddy Chen stated that, contrary to LCLB reports, there were only two occasions when liquor was not cleared at the required time and did not agree with many of the LCLB violation charges. Mr. Roger Chen stated that some of the ‘business owners’ who signed the attached letter of complaint thought they were signing a form for some other type of strata issue.

A letter from Mr. Chen (attached) outlines the many positive aspects of the Green Element business, refers to situations where customers overstay ‘the hours of operation’ after ordering alcohol with dinner and states that ‘the inspectors’ have been rude to staff and customers.

Having completed the review and taking into consideration, information received from the Green Element representatives, the RCMP , the LCLB and the City’s Business Licence Inspector, it is the opinion of the Chief Licence Inspector that this business should have their business licence cancelled.

Based on the information presented, it would appear that the management of Green Element is often inclined to operate as an ‘after hours private liquor club’. With the cancellation of their liquor licence, the LCLB will no longer be monitoring this establishment. Green Element has repeatedly shown negligent disregard for City of Richmond Bylaws and Provincial Liquor Control and Licensing Act and Regulations. According to the RCMP, this lack of care and control may also have contributed to the stabbing incident, which occurred directly outside the premise. This business has made no attempt to operate within the requirements and regulations of the Liquor

Control Act and City Business Licence Bylaws. This leads the undersigned to believe a cancellation of the business licence is warranted in order to prevent a continuation of these offences.

By violating the Liquor Control and Licensing Act and Regulations, this business has also violated the Business Licence Bylaw No 7360 at section 5.1 (b) & (d) and Business Licence Regulations Bylaw No 7538 at section 22.1 (b) & (d) by failing to comply with any of the provisions of these two bylaws, or any other bylaw or applicable statute and by failing to maintain the standard of qualification required for the issuance of a business licence. Further, this business has permitted smoking inside the premise, contrary to Public Health Protection Bylaw No. 6989, section 6.1.1.1(a) to (k). A copy of the relevant sections of the City and Public Health Bylaws is attached.

Financial Impact

Green Element City business licence is valid until July 1, 2007. If the business licence were not cancelled, the licence fee to renew would be approximately \$365.00. The cost to the City of RCMP and staff resources to monitor and repeatedly attend to violations at this premises should also be considered.

Conclusion

Green Element Resturant has contravened the City Business Licence Bylaw, the Business Regulation Bylaw and the Public Health Protection Bylaw. As such, their non compliance warrants a cancellation of their business licence.



Amarjeet S Rattan
Chief Licence Inspector
(4686)

AR:ar

**OCTOBER 5, 2006 - LCLB
NOTICE OF ENFORCEMENT ACTION**

GREEN ELEMENT



NOTICE OF ENFORCEMENT ACTION
Liquor Control and Licensing Act R.S.B.C. 1996, c. 267

File No: EH06-152
Job No: 004690153-011

October 05, 2006

Deroye Enterprises Ltd.
c/o Roger Chen
#2170 - 8788 McKim Way
Richmond, BC V6X 4E2
Canada
Telephone: (778) 882-8080

Attachment 1

Fax: (604) 591-8080

Dear Mr. Chen:

Re: License Number: 301770
License Type: Food Primary
License Expiry Date: October 31, 2006
Establishment: Green Element Dining & Lounge
2170 - 8788 McKim Way
RICHMOND, BC V6X 4E2

The purpose of this notice is to inform you that the General Manager is taking enforcement action for the alleged contravention(s) of the *Liquor Control and Licensing Act*, the *Regulations*, and/or the terms and conditions of your license as set out in this notice.

The General Manager will consider the information contained in this notice at the enforcement hearing.

THE ALLEGED CONTRAVENTION(S)

No.	Name of Contravention(s)	Section of the Act/Regulation	Date and Time of Contravention(s)	Proposed Penalty
1.	Fail to clear liquor within 1/2 hour after liquor service hours, Reg. s. 44(1)(b)	Reg. s. 44(1)(b)	Oct 01, 2006 2:35 AM	Cancel Licence

Ministry of
Public Safety and
Solicitor General

Liquor Control and
Licensing Branch

Mailing address:
PO Box 9292 Stn Prov Govt
Victoria BC V8W 9J8

Location:
Second Floor, 1019 Wharf Street
Victoria BC

Toll Free: 1 866 209-2111
Telephone: 250 387-1254
Facsimile: 250 387-9184

www.pssg.gov.bc.ca/lclt

SUMMARY OF EVIDENCE

See Green Element Schedule 1 Document.

ALLEGED CONTRAVENTION(S)

Contravention Number B005273 : C Fail to clear liquor within 1/2 hour after liquor service hours, Reg. s. 44(1)(b)

Reasons for Recommending Enforcement Action

The hours during which a licensed establishment is open for the sale of liquor are determined, in part, by community standards. In particular, hours of liquor sale affect the surrounding residents and businesses in the community. The failure by the licensee to take liquor from patrons in a food-primary licensed establishment gives patrons the opportunity to continue consuming liquor while the restaurant remains open, even though the hours of liquor service have ended. This, in turn, can result in a shift in focus in the establishment's operation.

Additionally, the service of liquor after hours is an unfair business practice that lends itself to destructive competition within the industry.

This establishment was issued a new licence in November 2005 and one of the licensees attended a food primary information session on November 16, 2005. A contravention notice was issued February 25/06 (less than 3 months after obtaining their licence and the first inspection conducted on this premise) for Fail to clear liquor within 1/2 hour beyond liquor hours; Allow to consume liquor beyond hour after liquor hours; Licensee or employee consuming liquor; and the Sale of bottles of spirits. As a result, a compliance meeting was conducted with Licensee Roger Chen and the Manager Edward Chen. Both agreed and signed an acknowledgment during the compliance meeting to comply with the above in the future as well as comply with all the terms and conditions of a food-primary licence. This also included that the establishment must never change it's focus away from operating as a food-primary licence.

A second contravention notice was issued on April 9/06 for Fail to clear liquor within 1/2 hour beyond liquor hours. A third contravention notice was issued to this establishment on May 13/06 for Fail to Clear Liquor (proven at a hearing - \$5000 monetary penalty). A fourth contravention notice (6 days after the third) was issued for Fail to clear liquor on May 19/06 (proven at hearing - \$7000 monetary penalty). A fifth contravention for Fail to clear liquor was then issued on June 18/06 (proven at hearing - \$10000 monetary penalty).

There was a police call out to this establishment earlier this year due to a stabbing outside the front door of the establishment (under investigation). The branch has received complaints from business owners of damage to business property caused by Green Element patrons on a regular basis and after hours.

Reasons for the Proposed Penalty

The consistent after hours activity and the nature that they are carried out, along with the police call out regarding the stabbing incident, makes this establishment difficult to inspect by C&E Officers without the police being present. This establishment's after hours patron behavior toward C&E Officers would be very unpredictable and may compromise their personal safety. This make it difficult for the General Manager to properly supervise the conduct of this 'Food Primary Establishment'.

Due to the accumulation of the above noted contraventions issued, an earlier enforcement action was recommended. An enforcement hearing was conducted and the licensee was ordered to pay monetary penalties amounting to \$29,500. Within a week after the hearing

ordered to pay monetary penalties amounting to \$29,000. Within a week after the hearing decision, they have again been issued a contravention for after hours service of liquor. Although the monetary penalties were significant, it has obviously not deterred this establishment from complying with their terms and conditions.

Since November 2005 (less than a year with a licence), an extreme level of resources (LCLB, City and RCMP)has been required to regulate this establishment's non-compliance. Due to the nature of this establishment's practice with after hours service and their patrons. The only responsible alternative is for the branch to cancel this licence.

The licensee's compliance history, along with its cavalier response following the September 27/06 decision that made 3 findings of failing to clear liquor, makes it obvious that the licensee will not comply to the conditions on its licence. Further more, the manner under which the licensee arranges its business practices, namely stationing 'look outs' and having patrons call up before being permitted entry, prevents the general manager from properly supervising the establishment and carrying out her mandate to ensure public safety.

Therefore;

The enforcement hearing advocate will recommend to the general manager at an enforcement hearing that cancellation of licence number 301770 is warranted. In certain situations, the General Manager may consider a request by the licensee to allow a transfer of the license instead of cancellation.

THE PROCEDURES

An enforcement hearing may be scheduled to determine whether the alleged contravention(s) occurred and the appropriate penalty, if any, that should be imposed. You can contest the contravention(s) and/or the proposed penalty at the enforcement hearing.

Please Note: If a penalty is warranted, the General Manager may;

- Impose a suspension of the liquor license for a period of time;
- Cancel a liquor license;
- Impose terms and conditions to a license or rescind or amend existing terms and conditions;
- Impose a monetary penalty; or
- Order a licensee to transfer a license.

An enforcement hearing can be time consuming and costly for all participants. If you sign a waiver, there will be no need for an enforcement hearing for the alleged contravention(s) or the lesser but included contravention(s). By signing the waiver, you expressly and irrevocably:

- Agree that the contravention(s) occurred,
- Accept the proposed penalty in this letter,
- Waive the enforcement hearing, and
- Agree that the finding(s) of contravention(s) and the penalty will form part of your compliance history as a licensee.

Generally, the waiver must be signed within 14 days of the date of this letter. If you decide you want to sign a waiver, please contact me as soon as possible to arrange an appointment.

CONTACTS

(1) If you do not sign a waiver, the case management administrator will contact you with details of the enforcement hearing process. The case management administrator contact information is:

Shirley Martin; (250) 356-0010; Shirley.Martin@gov.bc.ca

(2) Please contact me at (604) 775-0053 if you want to sign a waiver notice or if you have any questions regarding this notice.

Yours truly,

Doug Dyck
Vancouver

Attachments:

Appendices A & B
Copy of Enforcement Hearing Rules
Copy of Liquor Licence
Copy of Contravention Notice
Copy of Red line Floor Plan

APPENDIX A

License Information

License number: 301770
 License type: Food Primary
 License expiry date: October 31, 2006

At an enforcement hearing, the branch may present the following information related to allegations of non-compliance for which the branch did not pursue enforcement action. If there is a finding that the contravention(s) alleged which are the subject of this Notice of Enforcement Action did occur, the following information may be considered by the General Manager, for the purpose of determining what penalty, if any, is appropriate. The General Manager may also consider this information when assessing if the licensee knew that there were problems meeting the legislated requirements and what the licensee has done since it was brought to their attention that there were alleged contraventions:

Date of Incident	Alleged Contravention	Identifying Document(s)
October 01, 2006	Fail to clear liquor within 1/2 hour after liquor service hours, Reg. s. 44(1)(b)	CN # B005273
May 13, 2006	Allow to consume beyond 1/2 hour after liquor service hours, Reg. s. 44(3)	CN # B006311
May 13, 2006	Contravening a term and condition, s. 12 - Drink Sizes	CN # B006311
May 13, 2006	Allow to consume beyond 1/2 hour after liquor service hours, Reg. s. 44(3)	CN # B005262
May 13, 2006	Contravening a term and condition, s. 12 - Drink Sizes	CN # B005262
May 13, 2006	Allow to consume beyond 1/2 hour after liquor service hours, Reg. s. 44(3)	CN # B005263
May 13, 2006	Contravening a term and condition, s. 12 - Drink Sizes	CN # B005263
April 09, 2006	Fail to clear liquor within 1/2 hour after liquor service hours, Reg. s. 44(1)(b)	CN # B006305
February 25, 2006	Contravening a term and condition, s. 12 - Drink Sizes	CN # B006303
February 25, 2006	Licensee or employee consume liquor in premises, Reg. s. 42(3)	CN # B006303
February 25, 2006	Fail to comply with RBS, Reg. s. 43	CN # B006303
February 25, 2006	Allow to consume beyond 1/2 hour after liquor service hours, Reg. s. 44(3)	CN # B006303
February 25, 2006	Fail to clear liquor within 1/2 hour after liquor service hours, Reg. s. 44(1)(b)	CN # B006303

Compliance Meetings:

Date	Topic
March 07, 2006	Fail to clear liquor within 1/2 hour after liquor service hours, Reg. s. 44(

APPENDIX B

License Information

License Number: 301770
License Type: Food Primary
License Expiry Date: October 31, 2006

At an enforcement hearing, the General Manager will consider compliance history when determining the appropriate penalty for each contravention.

LICENSEE'S COMPLIANCE HISTORY

The licensee's compliance history consists of any prior findings of contraventions and penalties that relate to the licensee in question. A finding of contravention results when the licensee signs a waiver or the General Manager makes a decision that a contravention did occur. The General Manager may also consider this information when assessing if the licensee knew that there were problems meeting the legislated requirements and what the licensee has done since it was brought to their attention that there were alleged contraventions.

No.	Date	Contravention Notice Number	Findings of Contravention	Penalty Imposed
1.	June 18, 2006	B005263; EH06-113	Fail to clear liquor within 1/2 hour after liquor service hours, Reg. s. 44(1)(b)	\$10000 monetary penalty
2.	June 18, 2006	B005263; EH06-110	Fail to clear liquor within 1/2 hour after liquor service hours, Reg. s. 44(1)(b)	\$10000 monetary penalty
3.	May 19, 2006	B005262; EH06-113	Fail to clear liquor within 1/2 hour after liquor service hours, Reg. s. 44(1)(b)	\$7000 monetary penalty
4.	May 13, 2006	B006311; EH06-072	Fail to clear liquor within 1/2 hour after liquor service hours, Reg. s. 44(1)(b)	\$5000 monetary penalty
5.	May 13, 2006	B006311; EH06-072	Operate contrary to primary purpose, s. 20(1)(d), Reg. s. 11(1)	\$7500 monetary penalty
6.	May 13, 2006	B006311; EH06-113	Fail to clear liquor within 1/2 hour after liquor service hours, Reg. s. 44(1)(b)	\$5000 monetary penalty
7.	May 13, 2006	B006311; EH06-113	Operate contrary to primary purpose, s. 20(1)(d), Reg. s. 11(1)	\$7500 monetary penalty
8.	May 13, 2006	B006311; EH06-110	Fail to clear liquor within 1/2 hour after liquor service hours, Reg. s. 44(1)(b)	\$5000 monetary penalty
9.	May 13, 2006	B006311; EH06-110	Operate contrary to primary purpose, s. 20(1)(d), Reg. s. 11(1)	\$7500 monetary penalty

ESTABLISHMENT'S COMPLIANCE HISTORY

The establishment's compliance history consists of any prior findings of contraventions and penalties that relate to the establishment in question. A finding of contravention results when the licensee responsible for the establishment signs a waiver or the General Manager makes a decision that a contravention did occur.

	Date	Contravention Notice Number	Findings of Contravention	Enforcement Action
4.	June 18, 2006	B005263; EH06-113	Fail to clear liquor within 1/2 hour after liquor service hours, Reg. s. 44(1)(b)	\$10000 monetary penalty
7.	June 18, 2006	B005263; EH06-110	Fail to clear liquor within 1/2 hour after liquor service hours, Reg. s. 44(1)(b)	\$10000 monetary penalty
3.	May 19, 2006	B005262; EH06-113	Fail to clear liquor within 1/2 hour after liquor service hours, Reg. s. 44(1)(b)	\$7000 monetary penalty
1.	May 13, 2006	B006311; EH06-072	Fail to clear liquor within 1/2 hour after liquor service hours, Reg. s. 44(1)(b)	\$5000 monetary penalty
2.	May 13, 2006	B006311; EH06-072	Operate contrary to primary purpose, s. 20(1)(d), Reg. s. 11(1)	\$7500 monetary penalty
5.	May 13, 2006	B006311; EH06-113	Fail to clear liquor within 1/2 hour after liquor service hours, Reg. s. 44(1)(b)	\$5000 monetary penalty
6.	May 13, 2006	B006311; EH06-113	Operate contrary to primary purpose, s. 20(1)(d), Reg. s. 11(1)	\$7500 monetary penalty
8.	May 13, 2006	B006311; EH06-110	Fail to clear liquor within 1/2 hour after liquor service hours, Reg. s. 44(1)(b)	\$5000 monetary penalty
9.	May 13, 2006	B006311; EH06-110	Operate contrary to primary purpose, s. 20(1)(d), Reg. s. 11(1)	\$7500 monetary penalty

**SEPTEMBER 27, 2006 - LCLB
DECISION OF GENERAL MANAGER**

GREEN ELEMENT



Attachment 3

**DECISION OF THE
GENERAL MANAGER
LIQUOR CONTROL AND LICENSING BRANCH**

IN THE MATTER OF

A hearing pursuant to Section 20 of

The Liquor Control and Licensing Act, R.S.B.C. 1996, c. 267

Licensee: Deroye Enterprises Ltd.
dba Green Element Dining & Lounge
2170 – 8788 McKim Way
Richmond, BC V6X 4E2

Case: EH06-072, EH06-110 and EH06-113

For the Licensee: Roger Chen

For the Branch: James Macdonnell

Enforcement Hearing Adjudicator: Sheldon M. Seigel

Date of Hearing: September 13, 2006

Place of Hearing: Vancouver

Date of Decision: September 27, 2006

INTRODUCTION

The licensee operates a food primary licensed establishment in Richmond (Liquor Licence No. 301770). The establishment is known as Green Element Dining & Lounge. The licensed hours of sale are 9:00 a.m. to 12:00 midnight seven days per week.

In the early morning of Saturday, May 13, 2006, (the business day of May 12, 2006) the Richmond Joint Inspection Team, consisting of two uniformed R.C.M. Police members, two plain-clothes R.C.M. Police members, two Compliance and Enforcement officers (C & E officer) and the Richmond Business License Inspector gained entry to the establishment and conducted a licence inspection check and a search for illicit liquor. The team found no illicit liquor but observed a large number of patrons in the establishment and considerable liquor on the tables. The team also observed only small quantities of "appetizers" on the tables, and ascertained that the kitchen was closed.

In the early morning of Friday, May 19, 2006, (the business day of May 18, 2006) four uniformed R.C.M. Police members, including a Corporal and three Constables, gained entry to the establishment and conducted a licence inspection check. The R.C.M. Police members observed a large number of patrons in the establishment and considerable liquor on the tables.

In the early morning of Sunday, June 18, 2006, (the business day of June 17, 2006) four uniformed R.C.M. Police members, including a Corporal and three Constables, gained entry to the establishment and conducted a licence inspection check. The R.C.M. Police members observed a large number of patrons in the establishment and considerable liquor on the tables.

As a result of these inspections, the Liquor Control and Licensing Branch (the branch) issued three Notices of Enforcement Action (NOEAs) to the licensee.

ALLEGED CONTRAVENTIONS

The branch alleged that on May 13, 2006, the licensee contravened Section 44(1)(b) of the *Regulation* by failing to clear liquor within ½ hour after liquor service hours, and contravened Section 20(1)(d) of the *Act* and Section 11(1) of the *Regulation* by operating a licensed premises contrary to the primary purpose.

The branch alleged that on May 19, 2006, the licensee contravened Section 44(1)(b) of the *Regulation* by failing to clear liquor within ½ hour after liquor service hours.

The branch alleged that on June 18, 2006, the licensee contravened Section 44(1)(b) of the *Regulation* by failing to clear liquor within ½ hour after liquor service hours.

RELEVANT STATUTORY PROVISIONS

See Schedule "A"

PRELIMINARY MATTERS

Notice

By the original Notices of Enforcement Action, the branch sought the following proposed penalties:

May 13, 2006:	Section 44(1)(b) <i>Regulation</i> - \$5,000 penalty Section 20(1)(d) <i>Act</i> and Section 11(1) <i>Regulation</i> - \$7,500 penalty
May 19, 2006:	Section 44(1)(b) <i>Regulation</i> - Cancel Licence
June 18, 2006	Section 44(1)(b) <i>Regulation</i> - Cancel Licence

On September 11, 2006, the branch amended the NOEAs by changing the proposed penalties as follows:

- May 13, 2006: Section 44(1)(b) *Regulation* - \$5,000 penalty
Section 20(1)(d) Act and Section 11(1) *Regulation*
- \$7,500 penalty
- May 19, 2006: Section 44(1)(b) *Regulation* - \$7,000 penalty
- June 18, 2006 Section 44(1)(b) *Regulation* - \$10,000 penalty

These changes, added \$17,000 to the proposed total penalty recommended and eliminated the proposed licence cancellation. The amendment was forwarded to my attention, but there was no indication that the licensee had notice of the changes. The amendment is dated September 11, 2006, two days before the hearing occurred.

In a more typical administrative tribunal setting, this potential lack of notice would be fatal to the process. A party appearing before an administrative tribunal in an enforcement hearing should have knowledge of the breadth and scale of the potential penalties that may be levied upon it. This would allow the party to have adequate information on which to make decisions regarding executing a waiver, attendance, representation, and generally how much of its resources to commit to disputing the issues.

In a liquor enforcement hearing, this potential oversight is an irregularity, but may not be fatal to the process. The unique legislative scheme provides that the general manager of the branch may take enforcement action against a licensee with or without a hearing, and may impose a monetary penalty or cancel a licence at her discretion (Section 20 Act). The Act, read as a whole, clearly establishes the general manager's right to summary process in the interest of public safety. I find that this process may include acting without advance notice to the licensee.

Further, the adjudicator, sitting as general manager for the purpose of the enforcement hearing is not bound to follow the proposed penalties put forth by the branch. Though it would be preferable for this to be more clearly communicated to the licensee in the NOEA or otherwise during the enforcement hearing process, I find that the late amendment is not fatal to the process.

I find that the licensee was aware of the significance of the potential penalties to be awarded. Accordingly, I find the licensee had adequate notice of the scale of the potential penalty to meet the requirement of administrative fairness.

Admissions

The branch file contains a letter confirming the results of a pre-hearing conference, at which the licensee's representative was present. The correspondence indicates that the licensee admitted that both of the contraventions alleged to have occurred on May 13, 2006, did occur as alleged.

The letter also indicates that the licensee disputed the occurrence of the alleged contraventions of May 19, 2006, and June 18, 2006.

It is noteworthy that the two contraventions, to which the licensee was prepared to admit, were the contraventions that (then) had monetary penalties proposed. The licensee disputed the two contraventions that carried proposed licence cancellation.

At the commencement of the hearing, following disclosure of the proposed penalty amendment, the licensee changed his position. He admitted that the establishment contravened Section 44(1)(b) on May 13, 2006, but denied the Section 20(1)(d) *Act* and Section 11(1) *Regulation* allegation relating to that date. He stated that he continued to dispute the May 19, 2006, allegation, but admitted to the contravention as alleged, relating to June 18, 2006.

At the hearing, the licensee presented no evidence disputing the two allegations of failure to clear under Section 44(1)(b), relating to May 13, 2006, and June 18, 2006.

Language

The licensee's principal appeared at the hearing with the manager of the Green Element. The manager stated at the commencement of the hearing that he was attending as a representative of the licensee along with the licensee's principal. He stated that although he would be a witness, he was asked by the licensee to be present through the hearing as a representative of the licensee in part because of language difficulties. The manager indicated that they had expected a translator to attend, to translate for both the licensee's principal and the manager, but the translator had not appeared. The manager stated that the licensee's principal did not speak English very well, but that he would translate for the licensee.

I asked if they required a short adjournment to attempt to locate the translator. The manager declined the offer. I engaged the manager in conversation in order to gauge his command of the English language. I also spoke to the licensee's principal, though he did not verbally reply to me.

I decided that the manager had a good working understanding of English, that he was able to communicate effortlessly with the licensee, and that he had no trouble communicating with me in English. Accordingly, I felt language was not an impediment to conducting the hearing. I decided to proceed.

Throughout the six hour hearing the licensee's principal spoke only rarely, and only to the manager. He did not converse in English. He did appear to follow the entirety of the proceeding with understanding, and pointed out notes and written

passages to the manager at appropriate times. I believe he understood everything that was said.

The manager conversed in English with a degree of sophistication. He questioned witnesses appropriately and was able, with some effort, to make comprehensive submissions to me and answer questions put to him. He translated to the licensee's principal where necessary.

I believe comprehension of English was not an issue in this hearing. I believe that the licensee's principal on his own accord or with the assistance of his manager understood and was able to communicate all relevant ideas for the duration of the hearing. I find the licensee was afforded all procedural fairness with respect to having the opportunity to hear and understand the case against him and to have his position and evidence heard.

ISSUES

1. Did the licensee contravene Section 44(1)(b) of the *Regulation* on May 13, 2006, May 19, 2006, and June 18, 2006, by failing to clear liquor within ½ hour after liquor service hours?
 2. Did the licensee contravene Section 20(1)(d) of the *Act* and Section 11(1) of the *Regulation* on May 13, 2006, by operating the licensed establishment contrary to its primary purpose?
 3. If contraventions are found, is a penalty warranted and if so, what is the appropriate penalty to be imposed?
-

EXHIBITS

- Exhibit No. 1: Book of Documents (the branch)
- Exhibit No. 2: Two pages of photographs provided by R.C.M.Police (the branch)
- Exhibit No. 3: Two pages of cash receipts (the branch)

EVIDENCE

The branch called an R.C.M.Police Corporal, an R.C.M.Police Constable, the Richmond Business Licence Inspector, and two C & E officers.

The R.C.M.Police members, the Municipal Business inspector, and the two C & E officers were present on May 13, 2006.

The R.C.M.Police Corporal was present on May 19, 2006. The two C & E officers were responsible for case management of the files relating to both May 13 and May 19, 2006, and were familiar with the R.C.M.Police files relating to all relevant dates.

No evidence was tendered relating to the admitted contravention of June 18, 2006.

The corroborated evidence of the branch witnesses regarding May 13, 2006, was as follows:

- The main entrance to the courtyard, through which the front door of the establishment is reached, was locked when the party arrived at
-

approximately 1:00 a.m. They entered the courtyard through a side door and gained access to the establishment through the kitchen exit.

- An unidentified male noticed the team enter through the side door and ran into the establishment.
 - Inside the establishment there were several dozen patrons seated at tables. There were considerable quantities of whiskey on the tables, in addition to mix, beer - both opened cans and unopened cans, cigarette packages, and few plates of appetizers.
 - One of the R.C.M. Police members smelled the whiskey glasses to confirm the contents.
 - Patrons and employees were smoking in the establishment.
 - Patrons were playing dice games, which are known to be drinking/gambling games.
 - Photographs were taken of the tables. Copies were identified in Exhibit No. 1.
 - The manager was asked to produce some receipts, which confirmed most of the purchases after 10:00 p.m. that evening were liquor with very little food purchased. Copies of these were identified as Exhibit No. 3.
 - The manager said that the Green Element operates like a bar after 11:00 p.m.
-

The corroborated evidence of the branch witnesses regarding May 19, 2006, was as follows:

- The inspection was carried out at approximately 1:00 a.m.
- The music was loud and the lights were dim in the establishment.
- Patrons were observed drinking and playing dice games in the establishment.
- There were many glasses of whiskey and jugs of mix on the tables, as well as cigarette boxes.
- There were a few plates of appetizers on the tables.
- Photographs were taken of the tables. Copies were identified as Exhibit No. 2.

The witnesses also testified:

- The establishment has a history of violence, including a reported near fatal stabbing.
 - The establishment is well known to police and the inspection team for operating outside of its licence hours, failing to comply with municipal smoking bylaws, failing to pay its municipal fines, failing to comply with licence requirements, failing to implement policies and procedures suggested by the branch at compliance meetings, failing to allow easy access to police and inspection teams, having an overall negative impact on the immediate businesses and generating significant complaints, and
-

employing staff who are either not trained or do not demonstrate that they are trained in liquor service.

- It is very unlikely that the branch will obtain voluntary compliance with the licence requirements from this licensee. It will likely continue to operate as it has, outside of the licence rules until they are shut down.

Finally, a C & E officer indicated that the branch had received a letter signed by 11 businesses that operate in the complex in which the Green Element is situated. He testified that the letter complained about the noise and disruption caused by the Green Element, the damage caused to the complex by the patrons of the Green Element on a regular basis, and the fear that the business owners had of retribution for complaining. He said that the letter was dated, and identified the unit location and names of the complainants. The C & E officer indicated that he had not shared the correspondence with the licensee, but that he wanted the correspondence to be a part of the evidence.

The licensee called the establishment's manager, and the licensee's principal.

Their evidence was as follows:

- A review of the floor plan shows that a portion of the establishment is a lounge. That area does not serve food to the extent that the food primary area does.
 - All of the round tables in the photos are in the lounge area.
 - The appetizers that are shown in the photos are not just small individual orders. They are large plates of food to be shared by customers. This is a cultural tradition. The French fries are a huge portion and can cost \$18. The salty chicken in one photo is for six people and cost almost \$50.
-

- Nobody orders a big meal or a steak at 11:00 p.m. That is why it looks like a bar at that time. It is part of the normal daily routine that late nights are a time when people order more liquor.
 - A full review of all receipts would show that the Green Element operates like a restaurant with large food sales. Total sales in the establishment are approximately 80% food and 20% liquor. The distinction is the time and day: On Friday and Saturday the patrons drink. It is hard to control.
 - The male who ran in from the outside was not an employee.
 - They don't lock the gate at the front of the complex. They do not have a key. Another business operator in the complex is responsible for locking the gate.
 - There were no bottles of whiskey on the tables on the nights in question.
 - The liquid in the glasses in the photos is not whiskey, but green tea. Whiskey is darker in colour.
 - In Exhibit No. 2 there are no patrons in the photos. That is because the patrons were waiting to pay at the cash desk. They had been told they could not drink any more because of the time, and the licensee had to give them a 10% discount because of that. The discount is shown on the receipt in Exhibit No. 3.
 - The dice game is a cultural tradition. The loser drinks. It is not gambling.
-

SUBMISSIONS

The branch submitted the following:

The Green Element was operating as a liquor primary bar at the time of the inspection on May 13, 2006. It is a requirement of the food primary licence that the establishment operate as a food primary restaurant during all business hours.

The manager admitted that the Green Element operates as a bar after 11:00 p.m.

The only documentary evidence of the sales of the establishment indicates that it operates as a bar, with little in the way of food sales.

The food primary licence requires that all service terminate at 12:00 a.m. Even after that time, the evidence shows that the establishment was operating as a bar.

The evidence is clear that the contraventions of failure to clear within ½ hour have occurred, and that the Green Element operates outside its business hours regularly.

The penalties should reflect that the contraventions are having a direct impact on the surrounding community. The history of allegations and the evidence of the municipal business licence inspector confirm this.

The evidence of the witnesses is that the licensee will continue to operate contrary to the terms of the licence and will not comply voluntarily.

The licensee admitted to the contravention of failing to clear liquor within ½ hour after service hours on May 13, 2006, and June 18, 2006, and submitted the following with respect to the remaining allegation of May 13, 2006, and May 19, 2006:

The inspection team only asked for receipts relating to a short period of time. The licensee provided what was requested. The receipts for the rest of the day would show that the percentage of food served in a given day is much higher than the late night receipts indicated.

The ratio of food sales to liquor sales, dollar-for-dollar is not a fair comparison. A patron might order a \$200 bottle of wine with \$20 steak. This is typical in a restaurant.

On May 19, 2006, the patrons were asked to leave on time. They were lined up to pay, which is why they were not at the tables in the photographs in Exhibit No. 2. The photos were taken at 1:00 a.m., thirty minutes after the licensee was to clear the tables. They were trying to do what was required, but there were many patrons and it took a little too long.

The photos in Exhibit No. 1 show people with liquor at the tables, but they had already eaten their food and were sitting with only the liquor remaining. Food plates had been removed earlier.

The comment that the manager made about the Green Element operating as a bar after 11:00 p.m. was misinterpreted due to his lack of command of the English language. He meant that after 11:00 p.m. more people drink because most of the patrons have already eaten by then.

ANALYSIS AND DECISION

The letter from business operators in the complex

It is well established that a party appearing before a tribunal is entitled to know the case it has to meet. This is a fundamental tenet of procedural fairness. This would, in the first instance, require that the letter of complaint from the business operators be disclosed with enough notice that the licensee would have an opportunity to marshal evidence to answer it. In a typical administrative hearing, the letter could not be used without proper disclosure.

There are two factors weighing upon me which I find operate to modify the process in this instance: I have been appointed by statute as the general manager of the branch for the purpose of this hearing, and as such I have a primary obligation to act in the interest of public safety. Accordingly, this is not a typical tribunal hearing

As general manager, I am deemed to have control and knowledge of the entirety of the branch's file relating to the licensee. This is confirmed by the regulatory direction that as adjudicator I may consider past allegations of contraventions when deciding upon a penalty for a licensee, notwithstanding that those allegations have not been proven. Therefore, as general manager, I am technically already in possession of the said correspondence and aware of its contents. It would, therefore, be an untenable fiction for me to decide this matter without having considered the relevance of its contents to the allegations before me and the determination of a penalty, if any is warranted.

In order to discharge my duty to act in the interest of public safety, it was required that I review the letter before allowing it to be shared with the licensee. I therefore reviewed the letter.

I found that the letter was significant. It was quite specific in identifying complaints against the Green Element. The complaints were of nuisance, and property damage, and most notably a threat made by the Green Element's management to a business owner operating nearby. The 11 complainants were clearly identified. I decided that my mandate to act in the interest of public safety required that I refuse to allow the letter to be shared with the licensee.

I therefore rejected the letter as an exhibit, and directed that the letter not be provided to the licensee during the course of the hearing.

I find that the overriding obligation to act in the interest of public safety demanded that I consider the letter of complaint (with which I was technically already seized) without allowing the licensee access to it. In doing so I considered that the licensee had no opportunity to respond to the content of the letter, to cross-examine the authors of the letter, or to marshal any evidence to defend against the allegations made in the letter.

I made no determination based solely upon the evidence contained in the letter, but I did consider that evidence in determining an appropriate penalty for the contraventions found.

Primary Purpose

The primary purpose of an establishment with a food primary licence must be the service of food during all hours of its operation.

I find on the evidence that the Green Element did operate on a frequent if not regular basis, contrary to this requirement. I find that the establishment has been operating on Fridays and Saturdays, and late night during business hours, with the service of liquor as its primary purpose. I find that during these times, food was served as an accompaniment to the liquor.

The correct allegation

The branch argued the Green Element was operating as a bar outside of the hours of operation specified on the food primary licence, and that this was contrary to the primary purpose (Section 11(1) *Regulation*). This is problematic.

The branch must be clear as to whether the contravention alleged is *operating contrary to primary purpose*, or *operating outside of the hours of operation*. It is insufficient for the branch to submit that the licensee was doing both together. The danger is that the wrong contravention may be alleged.

In this case, I find the branch is saved by overwhelming evidence that the licensee was operating as a liquor primary bar *during* its hours of operation. I find that the evidence establishes on the balance of probabilities that the Green Element was so operating on a frequent if not regular basis.

This cures what might otherwise be fatal to the allegation. If the evidence supported a narrow conclusion that after hours on May 13, 2006, only, the licensee was operating as a bar, the allegation of breaching Section 11(1) and 20(1)(d) would fail. The evidence in that situation would not speak to the operation of the establishment during its hours of operation. Therefore, the correct allegation would be that the establishment was operating beyond its hours of operation contrary to the licence.

The Licensee's submissions

While I accept the submissions of the licensee that the cultural pattern of the establishment's patrons dictates the service of large plates of food for sharing, I find that the quantity of food relative to the quantity of liquor served does not meet with the requirement of the *Regulation*. I also agree with the licensee that the ratio of dollars spent on liquor to dollars spent on food is not necessarily

determinative of the contravention. I find, however, that this is an appropriate factor to consider when weighing all of the evidence with respect to such an allegation.

I accept the evidence of the manager that he may have been misinterpreted with respect to his statement that the establishment operated as a bar after 11:00 p.m. I find, however, that the content of the statement is true, and I was able to make this finding of fact without relying on the statement itself. There was no evidence from the licensee that anything was different at 11:00 p.m. from what the inspection team saw at 1:00 a.m. The licensee provided evidence that at other times the establishment operated with a food primary purpose, but that same evidence supported a liquor focus in the late evening.

The licensee submitted that he has control over receipts that would prove that the Green Element relies on food sales, rather than liquor sales for the bulk of its revenues. The licensee did not produce any receipts to substantiate this claim. I cannot accept the licensee's submission in this regard without those receipts. Further, the total food and liquor receipts would not be determinative of operating pursuant to the primary purpose of the licence for the same reason that the ratio of dollars spent on liquor to dollars spent on food is not necessarily determinative of the contravention.

The licensee pointed to Exhibit No. 2 as an indication that the branch's witnesses failed to take into account the lounge licence identified in the red-lined plan of the establishment, in regard to the allegation of operating contrary to primary purpose. The photographs in Exhibit No. 2 were taken on May 19, 2006, and therefore, refer to the allegation of failure to clear, made on that date. The photographs in Exhibit No. 1, taken on May 13, 2006, show a similar state of affairs on the rectangular tables in the food primary area as well as the round tables in the lounge area. The licensee's argument therefore, must fail.

I find that the contravention of operating contrary to primary purpose Section 11(1) of the *Regulation* and Section 20(1)(d) of the *Act* has been proven.

Failure to clear:

The evidence as supported by the photographs in Exhibit No. 1 and Exhibit No. 2 is clear that on May 19, 2006, the licensee did fail to clear liquor off of the tables within ½ hour after liquor service hours. I do not accept the licensee's submissions that patrons left the tables to pay at the cash desk and the staff was therefore delayed in clearing the tables by the inspection team or otherwise. I find that the tables were not cleared of liquor in a timely fashion on May 13, 2006, May 19, 2006, or June 18, 2006. I find that the evidence discloses the failure to clear in a timely fashion represents the norm for the Green Element.

The licensee admitted to the contravention of failure to clear on May 13, 2006, and June 18, 2006.

I find the contraventions of Section 44(1)(b) of the *Regulation* did occur on all three dates.

PENALTY

Pursuant to Section 20(2) of the *Act*, having found that the licensee has contravened the *Act*, the *Regulation* and/or the terms and conditions of the licence, I have the discretion to order one or more of the following enforcement actions:

- impose a suspension of the liquor licence for a period of time;
 - cancel a liquor licence;
 - impose terms and conditions to a licence or rescind or amend existing terms and conditions;
-

- impose a monetary penalty;
- order a licensee to transfer a licence.

Imposing any penalty is discretionary. However, if I find that either a licence suspension or monetary penalty is warranted, I am bound to follow the minimums set out in Schedule 4 of the *Regulation*. I am not bound by the maximums and may impose higher penalties when it is in the public interest to do so. I am not bound to order the penalty proposed in the Notice of Enforcement Action.

This establishment was issued a new licence in November 2005. The representative and his manager have since attended an information session and a compliance meeting. They have each signed a commitment to comply with the rules of liquor service. Notwithstanding the efforts of the branch, the licensee has been issued 12 contravention notices in the first eight months of operation. The contraventions alleged include:

- Failure to clear liquor within ½ hour after hours of liquor service (five times)
- Allow patrons to consume liquor after hours of liquor service
- Licensee or employee consuming liquor during hours of liquor service
- Sale of bottles of spirits

The evidence discloses that the licensee has also been issued tickets for municipal violations - including those for permitting smoking in the establishment. I note that the photographs in Exhibits No. 1 and No. 2 show cigarette boxes on the tables. The evidence also discloses - that the City of Richmond has had difficulty obtaining payment for those tickets.

I find that the licensee is not likely to voluntarily comply with the liquor rules at any time in the near future. I find that the licensee is likely an adverse influence on the surrounding community. I find that the licensee is causing an exceptional

drain on municipal and provincial resources utilized in the cause of enforcement. I find that consideration of the short time that this licensee has been operating, and during which it has amassed this considerable history, is critical to the determination of an appropriate penalty.

The branch recommended a \$5,000 penalty for the contravention of Section 44(1)(b) of the *Regulation* relating to May 13, 2006.

The range of penalty for a first contravention of this section of the *Regulation* in accordance with Schedule 4 of the *Regulation* is four (4) to seven (7) days suspension and/or a monetary penalty of \$4,000-\$7,000.

I find a \$5,000 penalty is appropriate.

The branch recommended a \$7,000 penalty for the contravention of Section 44(1)(b) of the *Regulation* relating to May 19, 2006.

This is the maximum amount specified in range of penalties in the *Regulation* for a first contravention of this section. Under the circumstances of this case, I find a \$7,000 penalty appropriate.

The branch recommended a \$10,000 penalty for the contravention of Section 44(1)(b) of the *Regulation* relating to June 18, 2006.

This is the beyond the maximum amount specified in range of penalties in the *Regulation* for a first contravention of this section. An adjudicator does have the jurisdiction to exceed the range of penalties for a first contravention specified in the *Regulation*. The branch is proposing that I exercise this authority. Although technically, this is a first contravention, this is the third finding of a contravention in terms of chronology. These findings follow numerous previous allegations of contraventions of the same section of the *Regulation*. I note for reference that a

second contravention of this section carries a recommended range of suspension of twice the days indicated for a first contravention. I find this information helpful in determining that a \$10,000 penalty is appropriate in this case.

The branch recommended a \$7,500 penalty for the contravention of Section 20(1)(d) of the *Act* and Section 11(1) of the *Regulation* relating to May 13, 2006.

The range of penalty for a first contravention of this section of the *Regulation* in accordance with Schedule 4 of the *Regulation* is ten (10) to fifteen (15) days suspension and/or a monetary penalty of \$7,500-\$10,000.

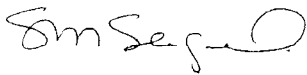
I find a \$7,500 penalty is appropriate.

The total monetary penalty is considerable but reflects the severity of the contraventions, and particularly the licensee's lack of demonstrated effort to reform the policies of the Green Element.

It is a term of this penalty award that failure to pay within the time specified will result in an expedited process for the cancellation of the food primary licence as directed in the Order below. This is consistent with the authority given me by the legislation to exceed the penalties recommended by the branch and to cancel a licence in my discretion. I find this to be an appropriate exercise of that discretion.

ORDER

I order the licensee to pay a monetary penalty of twenty-nine thousand five hundred dollars (\$29,500) relating to Food Primary Licence No. 301770. The monetary penalty must be paid no later than the close of business on Tuesday, October 17, 2006. In the event that the full amount of the monetary penalty has not been paid to the branch by the close of business on Tuesday, October 17, 2006, the branch may cancel Food Primary Licence No. 301770 any time thereafter without further notice to the licensee.



Sheldon M. Seigel
Enforcement Hearing Adjudicator

Date: September 27, 2006

cc: R.C.M. Police Richmond Detachment

Liquor Control and Licensing Branch, Vancouver Regional Office
Attn: Lee Murphy, Regional Manager

Liquor Control and Licensing Branch, Vancouver Regional Office
Attn: James Macdonnell, Branch Advocate

SCHEDULE "A"***Liquor Control and Licensing Regulation, BC Reg. 244/2002***

11(1) A food primary licence in respect of an establishment may be issued, renewed or transferred if the primary purpose of the business carried on in the establishment is the service of food during all hours of its operation.

44 (1) Unless otherwise authorized by the general manager,

(b) food primary licensees must ensure that liquor is taken from patrons within ½ hour after the time stated on the licence for the hours of liquor service, unless the liquor is a bottle of wine that is sealed in accordance with section 42(4)(a).

Liquor Control and Licensing Act, RSBC 1996 Chapter 267

s. 20(1) In addition to any other powers the general manager has under this Act, the general manager may, on the general manager's own motion or on receiving a complaint, take action against a licensee for any of the following reasons:

(d) the existence of a circumstance that, under section 16 would prevent the issue of a license;

Issue of licence prohibited

16 (1) A licence must not be issued, renewed or transferred if, in the general manager's opinion, the applicant

(a) is not a fit and proper person,

(b) is not the owner of the business carried on at the establishment or the portion of the establishment to be licensed,

(c) is not the owner or lessee of the establishment or the portion of the establishment to be licensed, or

- (d) is disqualified under this Act or the regulations or has not complied with the requirements of this Act or the regulations.

 - (2) In deciding if a person is fit and proper for the purposes of subsection (1) (a), consideration must be given to convictions in the preceding 3 years under the laws of Canada or any province or the bylaws of a municipality or regional district in British Columbia.

 - (3) A licence must not be issued, renewed or transferred if, in the general manager's opinion, it would be contrary to the public interest.

 - (4) Without limiting subsection (3), the general manager must consider whether
 - (a) the applicant is the holder of, has an interest in or is applying for another licence under this Act, or
 - (b) the applicant is qualified under this Act or the regulations or has complied with the requirements of this Act or the regulations.

 - (5) A licence, other than a special occasion licence under section 7, must not be issued, renewed or transferred except to
 - (a) a person who is a resident, normally resides in British Columbia and is not a minor,
 - (b) a partnership, of which each member is a resident, normally resides in British Columbia and is not a minor, or
 - (c) a corporation whose agent or manager selected by the corporation to carry on its business in the licensed establishment is a resident, normally resides in British Columbia and is not a minor.

 - (6) A special occasion licence must not be issued except to a person who is not a minor and who
 - (a) is a resident of and normally resides in British Columbia, or
 - (b) although not a resident of British Columbia is approved for a special occasion licence by the general manager.
-

**INSPECTOR DYCK - LCLB
OCTOBER 1, 2006 INSPECTION INFORMATION**

GREEN ELEMENT

Attachment 4

Green Element Dining and Lounge Schedule 1

This Food Primary Establishment's Liquor hours end at 12:00 midnight 7 days a week with all liquor to be cleared before 12:30 am. The premise has a lounge endorsement with the lounge being located at the back of the restaurant beside the bar.

This establishment is on the second floor within an open air mall called Cosmos Mall. The access to the mall is from street level off McKim Way through a gate that leads into the mall courtyard which gives public access to all businesses within the mall. Dyck has made previous observations of this establishment's practice of 'look outs' at the front gate who's purpose it is to alert inside staff liquor inspectors or police. This regular practice of "look outs" prevents the general manager from properly supervising the conduct of the establishment. Dyck has also made observations of patrons parking on the street after hours looking up at the premise window while on their cell phone, and then minutes later, let in through the mall gate by an individual inside.

In the early morning of October 1/06 at approx. 00:45 hours(business day of September 30/06) Dyck and Lister drove by the Cosmos Mall and observed the front gates to the mall open. At approx. 01:00 hours Dyck and Lister again drove by the Cosmos Mall and observed the gates closed. Dyck and Lister then parked and began conducting surveillance of the front gate of the mall. LCLB Regional Manager Lee Murphy was conducting separate surveillance from another location. Surveillance was conducted for approx. 1 hour, and during that entire period LCLB staff observe two males standing outside the front gates with cell phones circulating around the building. It is believed these two individuals were looking around the area for authorities.

At approx. 02:30 hours, the Richmond joint inspection team of Dyck, Lister, Murphy, RCMP Cpl.Edwards, Cst. Yee, Cst. Landers and Auxiliary Cst.Mack attended the establishment to conduct a routine inspection.

The joint inspection team did not enter from McKim Way as the front entrance gate was closed with cars parked on the side of the street on McKim and the same 2 males standing by the front entrance.

The inspection team met up with 2 other RCMP members (Cst. Lee & Cst. Baskette) and parked their vehicles around the block and behind the Cosmos mall complex. The team then proceeded on foot to the back entrance of the of the Cosmos mall parkade, walked to the second level of the parkade and onto the second floor of Cosmos mall. There were 2 males standing outside the front entrance to the establishment and the door was locked (The front door is clear glass), before knocking on the door and within seconds of standing at the front door, a male came around the corner inside the premise (later identified as Yen Kai (Andy) Hu who is an employee of Green Element and is known to Dyck) and could immediately see Cpl. Edwards who was in full uniform. Hu unlocked the front door and the team proceeded inside at 02:34 hours. The following observations were made: 5 males seated at a table in the middle of the restaurant and outside of the lounge area. On the table was 18 cans of Kokanee and Budweiser beer; short glasses

containing beer; 1 jug ½ full of Chivas Regal Whiskey mixed with soda as admitted by the bartender/cashier Ke Tang. The contents of the jug had the distinct smell of Whiskey and is a very familiar smell to Dyck who has conducted hundreds of inspections in the Richmond area were this is a very popular beverage mixed with green tea or soda.

Cpl. Edwards took the identification from all 5 males to run a background check of each. Each male's identification came up with a criminal record. Dyck informed Hu and Tang that he would be mailing a contravention notice to the owner Roger Chen for Fail to Clear Liquor within ½ hour after liquor service hours.

**COMPLAINT LETTER FROM
COSMO PLAZA MALL BUSINESS AND STRATA OWNERS**

GREEN ELEMENT

Attachment 5

9/12/2006

To whom it may concern,

We are writing to you with our concerns regarding Green Element Restaurant located at 8788 McKim Way Richmond, B.C. V6X 4E2.

Every since they were issued food primary license to sell alcohol we have had nothing but problems. On almost nightly basis they have late night drinking parties

Below is a list of problems that have occurred.

- ▶ Customers and Staff urinating in public and in the hallways
- ▶ Customers vomit in common areas (hallways, walkways)
- ▶ Customers fighting and breaking common strata property
- ▶ April 2006 there was a gang fight and someone got stabbed
- ▶ Entry glass door on the second floor has been broken by them no less than 4 times
- ▶ Customers urinating on business doors
- ▶ Rowdy parties making other business difficult to do business
- ▶ Staff and Customers intimidating other business owners and other businesses customers
- ▶ Customers breaking branches from trees at front of building
- ▶ September 04, 2006 business window broken by rowdy staff or customer from Green Element (after hours when gates locked)
- ▶ September 05, 2006 business window broken by rowdy staff or customer from Green Element (after hours when gates locked)

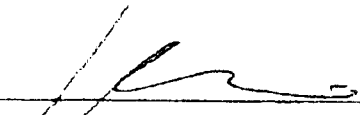
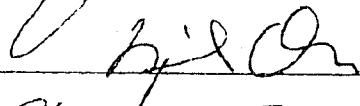
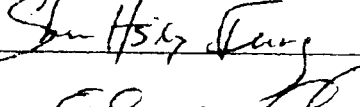
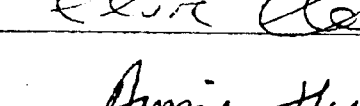
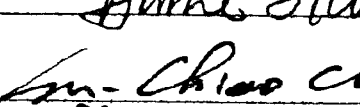
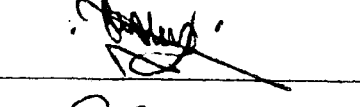
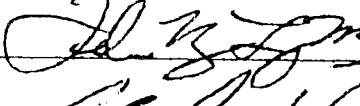
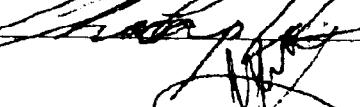

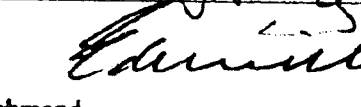


We have complained to their landlord who also is the strata property manager and his response is they have the right to do business, so we obviously can tell that he is only interested in his rent from them and not the effects that their business has on other businesses.

It also should be noted that they have the keys and lock the gates to the mall at night. So they are in complete control of the mall after hours. Green Element also closes its restaurant business at 10 p.m. nightly and this is when they start the late night drinking / party business, and as recent as Sept 13th were operating this illegal activity.

We bring this information to your attention in hopes that something will be done. We don't want to see our businesses suffer from their actions. Also we don't want to have the reputation of a mall that is dangerous to go to. These are gang members that are operating in there. There has already been one stabbing; our hope is that you can do something to prevent anything further from happening. We don't want to see any more bloodshed. Thanks for your time regarding this matter.

Sincerely,

Business and Strata owners of Cosmo Plaza

Signature		Unit #	1135
Signature		Unit #	1115
Signature		Unit #	1110
Signature		Unit #	1180
Signature		Unit #	1150
Signature		Unit #	2110
Signature		Unit #	1280
Signature		Unit #	3230
Signature		Unit #	1260
Signature		Unit #	1205
Signature		Unit #	2100-2160
			2130, 2135

cc City of Richmond

**OCTOBER 30, 2006 LCLB
NOTICE OF ENFORCEMENT ACTION**

GREEN ELEMENT



NOTICE OF ENFORCEMENT ACTION
Liquor Control and Licensing Act R.S.B.C. 1996, c. 267

File No: EH06-159
Job No: 004690153-012

October 30, 2006

Deroye Entreprises Ltd.
c/o Roger Chen
#2170 - 8788 McKim Way
Richmond, BC V6X 4E2
Canada
Telephone: (778) 882-8080

Attachment 6

Fax: (604) 591-8080

Dear Mr. Chen:

Re: License Number: 301770
License Type: Food Primary
License Expiry Date: October 31, 2006
Establishment: Green Element Dining & Lounge
2170 - 8788 McKim Way
RICHMOND, BC V6X 4E2

The purpose of this notice is to inform you that the General Manager is taking enforcement action for the alleged contravention(s) of the *Liquor Control and Licensing Act*, the *Regulations*, and/or the terms and conditions of your license as set out in this notice.

The General Manager will consider the information contained in this notice at the enforcement hearing.

THE ALLEGED CONTRAVENTION(S)

No.	Name of Contravention(s)	Section of the Act/Regulation	Date and Time of Contravention(s)	Proposed Penalty
1.	Failure to pay monetary penalty, s.20 (2.6)	s. 20 (2.6)	Oct 20, 2006 8:00 AM	Cancel Licence

Ministry of
Public Safety and
Solicitor General

Liquor Control and
Licensing Branch

Mailing address:
PO Box 9292 Stn Prov Govt
Victoria BC V8W 9J8

Toll Free: 1 866 209-2111
Telephone: 250 387-1254
Facsimile: 250 387-9184

Location:
Second Floor, 1019 Wharf Street
Victoria BC

www.pssg.gov.bc.ca/tclt

SUMMARY OF EVIDENCE

An enforcement hearing was conducted for Green Element Dining and Lounge on September 13/06 for the following contraventions: Section 44(1)(b) of the Regulation relating to May 13/06; Section 20(1)(d) of the Act and Section 11(1) of the Regulations relating to May 13/06; Section 44(1)(b) of the Regulation relating to May 19/06; Section 44(1)(b) of the Regulation relating to June 18/06. On September 27/06, the General Manager rendered a decision finding Green Element in contravention for each section of the above noted contraventions and ordered the licensee to pay a total monetary penalty of \$29,500 by October 17/06.

As per Section 20(2.6) of the Act, a monetary penalty must be paid within 30 days of a decision by the General Manager. As of October 28/06 (31 days) and to date, the licensee has failed to pay their monetary penalty. On October 30/06 Contravention Notice B006143 was mailed to the licensee's office of record for Fail to Pay Monetary Penalty.

ALLEGED CONTRAVENTION(S)

Contravention Number B006143 : C Failure to pay monetary penalty, s.20 (2.6)

Reasons for Recommending Enforcement Action

This establishment was issued a new licence in November 2005 and one of the licensees attended a food primary information session on November 16, 2005. A contravention notice was issued February 25/06 (less than 3 months after obtaining their licence and the first inspection conducted on this premise) for Fail to clear liquor within 1/2 hour beyond liquor hours; Allow to consume liquor beyond hour after liquor hours; Licensee or employee consuming liquor; and the Sale of bottles of spirits. As a result, a compliance meeting was conducted with Licensee Roger Chen and the Manager Edward Chen. Both agreed and signed an acknowledgment during the compliance meeting to comply with the above in the future as well as comply with all the terms and conditions of a food-primary licence. This also included that the establishment must never change it's focus away from operating as a food-primary licence.

A second contravention notice was issued on April 9/06 for Fail to clear liquor within 1/2 hour beyond liquor hours. A third contravention notice was issued to this establishment on May 13/06 for Fail to Clear Liquor (proven at a hearing - \$5000 monetary penalty). A fourth contravention notice (6 days after the third) was issued for Fail to clear liquor on May 19/06 (proven at hearing - \$7000 monetary penalty). A fifth contravention for Fail to clear liquor was then issued on June 18/06 (proven at hearing - \$10000 monetary penalty). A sixth contravention for Fail to Clear Liquor was issued on October 03/06 (less than a week after the above proven contraventions). An Enforcement hearing is pending for the October 3/06 incident. They have now failed to pay the above monetary penalty within 30 days as per Section 20 (2.6) of the Act.

Reasons for the Proposed Penalty

This licensees compliance history, along with it's cavalier attitude for their terms and conditions, LCL Act and LCL Regulations shows a complete and utter disregard for the General Managers authority. Failing to pay the monetary penalty ordered by the General Manager makes it impossible to control this establishments liquor licence practices or achieve voluntary compliance if there are no consequences. Therefore, cancellation of this liquor licence is the only solution.

Therefore:

The enforcement hearing advocate will recommend to the general manager at an enforcement hearing that cancellation of licence number 301770 is warranted. In certain situations, the General Manager may consider a request by the licensee to allow a transfer of the license instead of cancellation.

THE PROCEDURES

An enforcement hearing may be scheduled to determine whether the alleged contravention(s) occurred and the appropriate penalty, if any, that should be imposed. You can contest the contravention(s) and/or the proposed penalty at the enforcement hearing.

Please Note: If a penalty is warranted, the General Manager may;

- Impose a suspension of the liquor license for a period of time;
- Cancel a liquor license;
- Impose terms and conditions to a license or rescind or amend existing terms and conditions;
- Impose a monetary penalty; or
- Order a licensee to transfer a license.

An enforcement hearing can be time consuming and costly for all participants. If you sign a waiver, there will be no need for an enforcement hearing for the alleged contravention(s) or the lesser but included contravention(s). By signing the waiver, you expressly and irrevocably:

- Agree that the contravention(s) occurred,
- Accept the proposed penalty in this letter,
- Waive the enforcement hearing, and
- Agree that the finding(s) of contravention(s) and the penalty will form part of your compliance history as a licensee.

Generally, the waiver must be signed within 14 days of the date of this letter. If you decide you want to sign a waiver, please contact me as soon as possible to arrange an appointment.

CONTACTS

(1) If you do not sign a waiver, the case management administrator will contact you with details of the enforcement hearing process. The case management administrator contact information is:

Shirley Martin; (250) 356-0010; Shirley.Martin@gov.bc.ca

(2) Please contact me at (604) 775-0053 if you want to sign a waiver notice or if you have any questions regarding this notice.

Yours truly,

Doug Dyck
Vancouver

Attachments:
Appendices A & B
Copy of Enforcement Hearing Rules
Copy of Liquor Licence
Copy of Contravention Notice
Copy of Red line Floor Plan

APPENDIX A

License Information

License number: 301770
 License type: Food Primary
 License expiry date: October 31, 2006

At an enforcement hearing, the branch may present the following information related to allegations of non-compliance for which the branch did not pursue enforcement action. If there is a finding that the contravention(s) alleged which are the subject of this Notice of Enforcement Action did occur, the following information may be considered by the General Manager, for the purpose of determining what penalty, if any, is appropriate. The General Manager may also consider this information when assessing if the licensee knew that there were problems meeting the legislated requirements and what the licensee has done since it was brought to their attention that there were alleged contraventions:

Date of Incident	Alleged Contravention	Identifying Document(s)
October 20, 2006	Failure to pay monetary penalty, s.20 (2.6)	CN # B006143
October 01, 2006	Fail to clear liquor within 1/2 hour after liquor service hours, Reg. s. 44(1)(b)	CN # B005273
May 13, 2006	Allow to consume beyond 1/2 hour after liquor service hours, Reg. s. 44(3)	CN # B006311
May 13, 2006	Contravening a term and condition, s. 12 - Drink Sizes	CN # B006311
May 13, 2006	Allow to consume beyond 1/2 hour after liquor service hours, Reg. s. 44(3)	CN # B005262
May 13, 2006	Contravening a term and condition, s. 12 - Drink Sizes	CN # B005262
May 13, 2006	Allow to consume beyond 1/2 hour after liquor service hours, Reg. s. 44(3)	CN # B005263
May 13, 2006	Contravening a term and condition, s. 12 - Drink Sizes	CN # B005263
April 09, 2006	Fail to clear liquor within 1/2 hour after liquor service hours, Reg. s. 44(1)(b)	CN # B006305
February 25, 2006	Contravening a term and condition, s. 12 - Drink Sizes	CN # B006303
February 25, 2006	Licensee or employee consume liquor in premises, Reg. s. 42(3)	CN # B006303
February 25, 2006	Fail to comply with RBS, Reg. s. 43	CN # B006303
February 25, 2006	Allow to consume beyond 1/2 hour after liquor service hours, Reg. s. 44(3)	CN # B006303
February 25, 2006	Fail to clear liquor within 1/2 hour after liquor service hours, Reg. s. 44(1)(b)	CN # B006303

Compliance Meetings:

Date	Topic
March 07, 2006	Fail to clear liquor within 1/2 hour after liquor service hours, Reg. s. 44(

APPENDIX B

License Information

License Number: 301770
License Type: Food Primary
License Expiry Date: October 31, 2006

At an enforcement hearing, the General Manager will consider compliance history when determining the appropriate penalty for each contravention.

LICENSEE'S COMPLIANCE HISTORY

The licensee's compliance history consists of any prior findings of contraventions and penalties that relate to the licensee in question. A finding of contravention results when the licensee signs a waiver or the General Manager makes a decision that a contravention did occur. The General Manager may also consider this information when assessing if the licensee knew that there were problems meeting the legislated requirements and what the licensee has done since it was brought to their attention that there were alleged contraventions.

No.	Date	Contravention Notice Number	Findings of Contravention	Penalty Imposed
1.	June 18, 2006	B005263; EH06-113	Fail to clear liquor within 1/2 hour after liquor service hours, Reg. s. 44(1)(b)	\$10000 monetary penalty
2.	June 18, 2006	B005263; EH06-110	Fail to clear liquor within 1/2 hour after liquor service hours, Reg. s. 44(1)(b)	\$10000 monetary penalty
3.	May 19, 2006	B005262; EH06-113	Fail to clear liquor within 1/2 hour after liquor service hours, Reg. s. 44(1)(b)	\$7000 monetary penalty
4.	May 13, 2006	B006311; EH06-072	Fail to clear liquor within 1/2 hour after liquor service hours, Reg. s. 44(1)(b)	\$5000 monetary penalty
5.	May 13, 2006	B006311; EH06-072	Operate contrary to primary purpose, s. 20(1)(d), Reg. s. 11(1)	\$7500 monetary penalty
6.	May 13, 2006	B006311; EH06-113	Fail to clear liquor within 1/2 hour after liquor service hours, Reg. s. 44(1)(b)	\$5000 monetary penalty
7.	May 13, 2006	B006311; EH06-113	Operate contrary to primary purpose, s. 20(1)(d), Reg. s. 11(1)	\$7500 monetary penalty
8.	May 13, 2006	B006311; EH06-110	Fail to clear liquor within 1/2 hour after liquor service hours, Reg. s. 44(1)(b)	\$5000 monetary penalty
9.	May 13, 2006	B006311; EH06-110	Operate contrary to primary purpose, s. 20(1)(d), Reg. s. 11(1)	\$7500 monetary penalty

ESTABLISHMENT'S COMPLIANCE HISTORY

The establishment's compliance history consists of any prior findings of contraventions and penalties that relate to the establishment in question. A finding of contravention results when the licensee responsible for the establishment signs a waiver or the General Manager makes a decision that a contravention did occur.

	Date	Contravention Notice Number	Findings of Contravention	Enforcement Action
4.	June 18, 2006	B005263; EH06-113	Fail to clear liquor within 1/2 hour after liquor service hours, Reg. s. 44(1)(b)	\$10000 monetary penalty
7.	June 18, 2006	B005263; EH06-110	Fail to clear liquor within 1/2 hour after liquor service hours, Reg. s. 44(1)(b)	\$10000 monetary penalty
3.	May 19, 2006	B005262; EH06-113	Fail to clear liquor within 1/2 hour after liquor service hours, Reg. s. 44(1)(b)	\$7000 monetary penalty
1.	May 13, 2006	B006311; EH06-072	Fail to clear liquor within 1/2 hour after liquor service hours, Reg. s. 44(1)(b)	\$5000 monetary penalty
2.	May 13, 2006	B006311; EH06-072	Operate contrary to primary purpose, s. 20(1)(d), Reg. s. 11(1)	\$7500 monetary penalty
5.	May 13, 2006	B006311; EH06-113	Fail to clear liquor within 1/2 hour after liquor service hours, Reg. s. 44(1)(b)	\$5000 monetary penalty
6.	May 13, 2006	B006311; EH06-113	Operate contrary to primary purpose, s. 20(1)(d), Reg. s. 11(1)	\$7500 monetary penalty
8.	May 13, 2006	B006311; EH06-110	Fail to clear liquor within 1/2 hour after liquor service hours, Reg. s. 44(1)(b)	\$5000 monetary penalty
9.	May 13, 2006	B006311; EH06-110	Operate contrary to primary purpose, s. 20(1)(d), Reg. s. 11(1)	\$7500 monetary penalty

RCMP INFORMATION

GREEN ELEMENT

Attachment 2

Green Element History

2006-04-08

At approximately 01:45 hrs on 2006-Apr-08 Richmond RCMP received report of a male having been stabbed at Green Element Lounge. EHS attended at attended to the victim.

Stabbing occurred outside of door of Lounge at an unknown time. Appears to have been delay in contacting police to clean crime scene. Likely source of water, in otherwise closed mall, would be Green Element. Subject sustained severe injuries but survived. Little cooperation from those at scene.

2006-04-09

At approximately 02:30 Richmond RCMP conducted inspections and observed liquor on tables contrary to the premises licence which requires liquor to be cleared by 00:30 hrs. Enforcement action taken by LCLB inspectors.

2006-05-13

At approximately 00:58 hrs Richmond RCMP members conducted an inspection. Patrons inside. Liquor on tables. Upon arrival u/k male attempt to warn patrons. Enforcement action forwarded to LCLB.

2006-May-19

At approximately 01:00 hrs Richmond RCMP members conducted an inspection. Patrons inside. Liquor on tables. Enforcement action forwarded.

2006-June-18

At approximately 03:05 hrs Richmond RCMP members conducted inspection. Over 19 persons inside. Liquor present on table. Liquor to be cleared by 00:30 hrs. Enforcement action to be taken by LCLB inspectors.

2006-Oct-01

On 2006-Oct-1 at approximately 02:38 hrs Richmond RCMP members and LCLB Inspectors made entry to Green Element Restaurant located at 2170-8788 Mckim Way. Several patrons found inside premises with alcohol. Premises is a food primary and required to clear all alcohol by 00:30 hrs. Enforcement action to be taken by LCLB inspectors.

This enforcement comes 3 days after \$29,500.00 fine had been received from

the LCLB.

**BUSINESS LICENCE INSPECTOR
INFORMATION AND PHOTOS**

GREEN ELEMENT



BC Company Summary

For

DEROYE ENTERPRISES LTD.

Date and Time of Search: **November 21, 2006 02:43 PM Pacific Time**
Currency Date: **October 31, 2006**

ACTIVE

Incorporation Number: **BC0709425**
Name of Company: **DEROYE ENTERPRISES LTD.**
Recognition Date and Time: **Incorporated on November 24, 2004 05:19 PM Pacific Time** **In Liquidation: No**
Last Annual Report Filed: **November 24, 2005** **Receiver: No**

REGISTERED OFFICE INFORMATION

Mailing Address:
1360 SPERLING AVENUE
BURNABY BC V5B 4J7
CANADA

Delivery Address:
1360 SPERLING AVENUE
BURNABY BC V5B 4J7
CANADA

RECORDS OFFICE INFORMATION

Mailing Address:
1360 SPERLING AVENUE
BURNABY BC V5B 4J7
CANADA

Delivery Address:
1360 SPERLING AVENUE
BURNABY BC V5B 4J7
CANADA

DIRECTOR INFORMATION

Last Name, First Name, Middle Name:

Chen, Roger Yun-Chi

Mailing Address:

1360 SPERLING AVENUE
BURNABY BC V5B 4J7
CANADA

Delivery Address:

1360 SPERLING AVENUE
BURNABY BC V5B 4J7
CANADA

Last Name, First Name, Middle Name:

Ken Ke, Tang

Mailing Address:

28-2801 ELLERSLIE AVE
BURNABY BC V5B 4R9
CANADA

Delivery Address:

28-2801 ELLERSLIE AVE
BURNABY BC V5B 4R9
CANADA

Last Name, First Name, Middle Name:

Mai, Anson Qiang

Mailing Address:

#33 - 2801 ELLERSLIE AVENUE
BURNABY BC V5B 4R9
CANADA

Delivery Address:

#33 - 2801 ELLERSLIE AVENUE
BURNABY BC V5B 4R9
CANADA

NO OFFICER INFORMATION FILED AS AT November 24, 2005.



City of Richmond

6911 No.3 Road, Richmond, BC V6Y 2C1
Telephone (604) 276-4000
www.city.richmond.bc.ca

Finance Department
Business Licence Division
Telephone: 604-276-4328
Fax: 604-276-4157

June 20, 2006
File: 05 299230

Roger Chen
Green Element Restaurant
8788 McKim Way - Unit # 2170
Richmond, BC V6X 4E2

Dear Sir:

Re: Municipal Ticket No. 15298

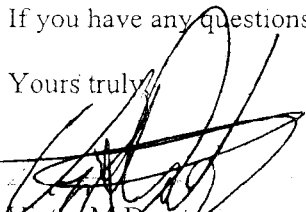
On May 19, 2006, you were issued a ticket for an offence on May 13, 2006, for **operator permitting smoking** offence under the City of Richmond **Public Health Protection Bylaw No. 6989**. Our records show that the voluntary penalty of \$250.00 was not paid nor was a Notice of Dispute filed with the Court.

The matter was referred to the Courts on June 16, 2006. A conviction was returned in your absence, as provided by law, with a mandatory fine imposed in the amount of \$250.00.

You now have 30 days to pay the imposed fine of \$250.00 or file an appeal by swearing an affidavit with the court Registry at 7577 Elmbridge Way, Richmond, BC. If a notice of appeal is not filed by **July 17, 2006**, the City will initiate collection action. (There is a \$15.00 non-refundable fee to swear an affidavit.)

If you have any questions, contact me at **604-276-4389**.

Yours truly,



Victor M. Duarte
Business Licence Inspector

VMD:vmd

ATTACHMENT 7

Green Element Restaurant
Photos taken by: V. Duarte on 06-05-13



Green Element Restaurant-Cont.
Photos taken by: V. Duarte on 06-05-13



Green Element Restaurant-Cont.
Photos taken by: V. Duarte on 06-05-13

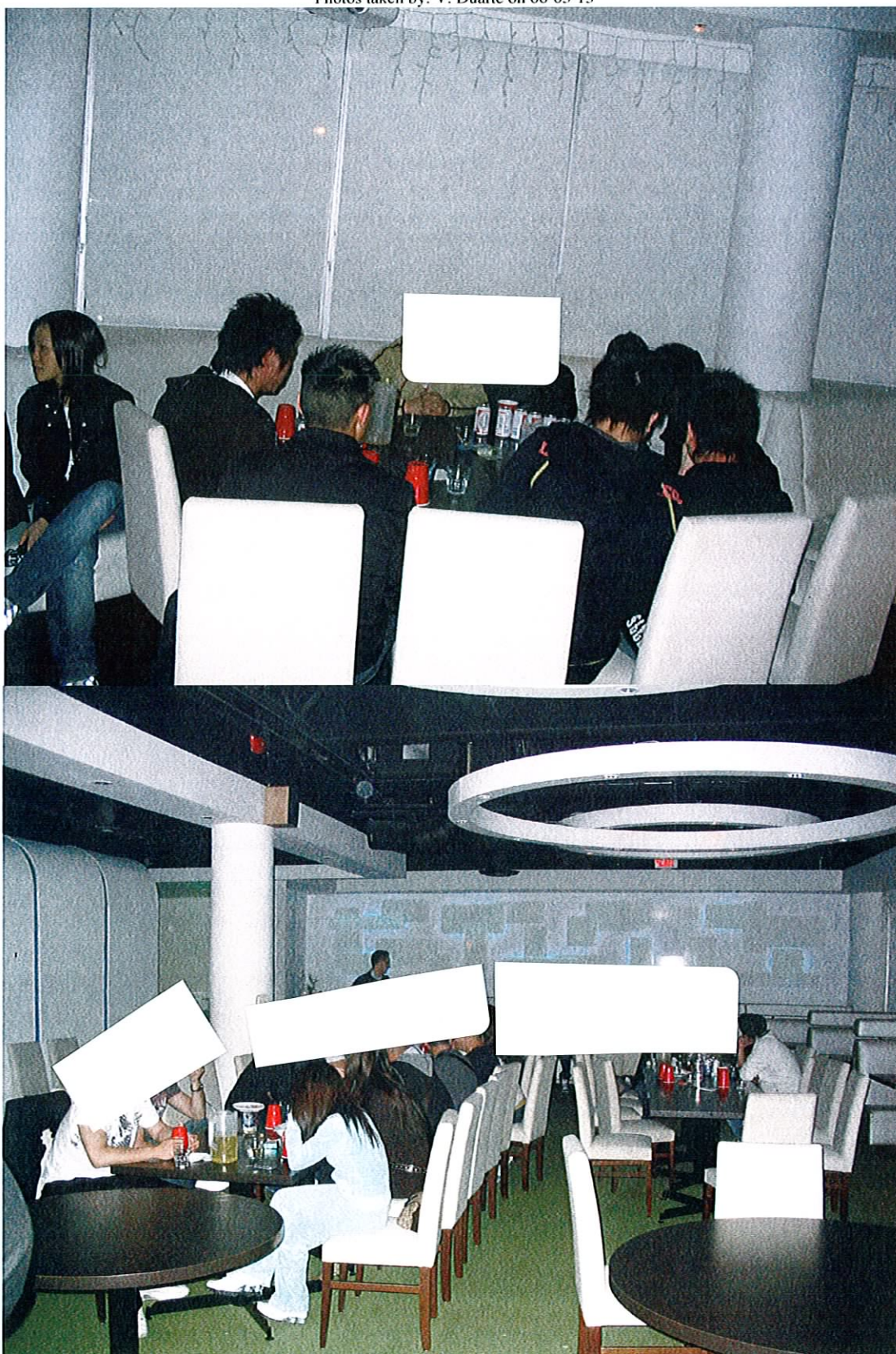


Green Element Restaurant-Cont.

Photos taken by: V. Duarte on 06-05-13



Green Element Restaurant-Cont.
Photos taken by: V. Duarte on 06-05-13



Green Element Restaurant-Cont.

Photos taken by: V. Duarte on 06-05-13



Green Element Restaurant-Cont.

Photos taken by: V. Duarte on 06-05-13



Green Element Restaurant-Cont.

Photos taken by: V. Duarte on 06-05-13



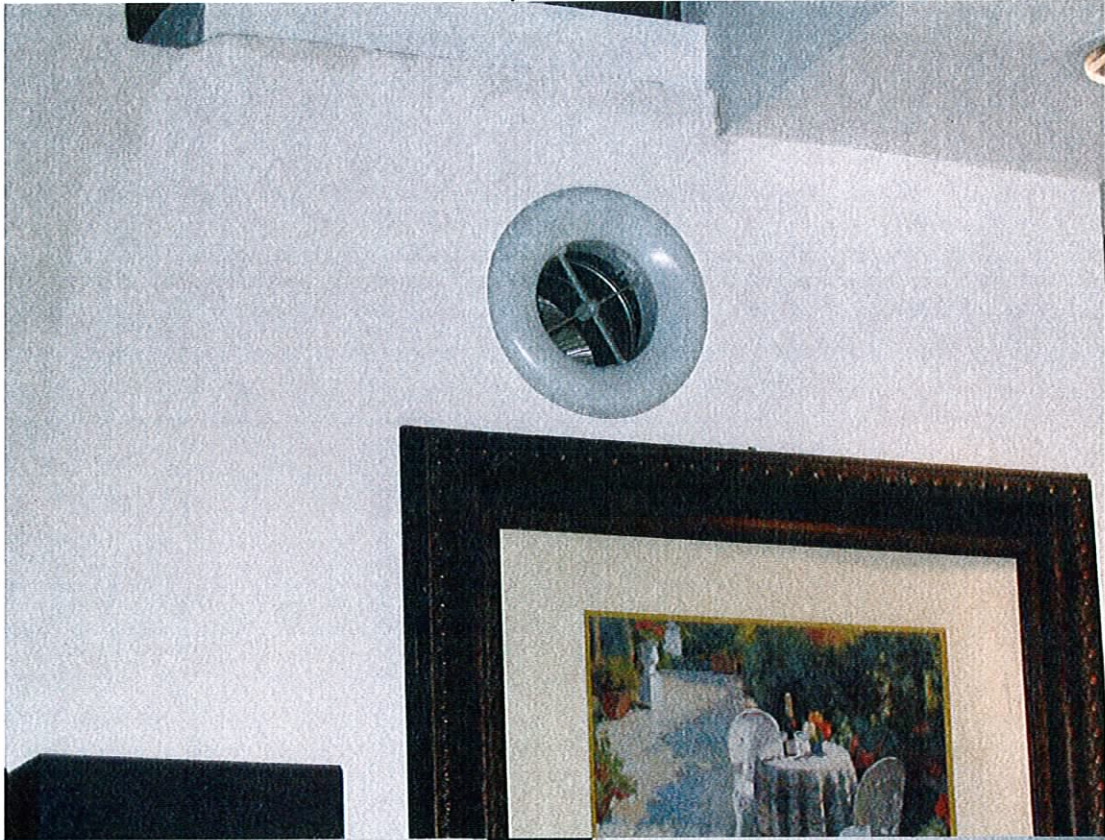
Green Element Restaurant-Cont.

Photos taken by: V. Duarte on 06-05-13



Green Element Restaurant-Cont.

Photos taken by: V. Duarte on 06-05-13



City of
Richmond

Community Charter

Ref # M 15298
05299230

MUNICIPAL TICKET INFORMATION

ISSUED TO: EDWARD, CHEN

SURNAME OR CORPORATE NAME GREEN ELEMENT RESTAURANT		<input type="checkbox"/> YOUNG PERSON	
GIVEN NAMES (OR CORPORATE NAME CONTINUED)		GENDER M/F	MM DD
ADDRESS 8788 McKim Way Mt #2170			
CITY RICHMOND		PROVINCE BC	POSTAL CODE V6X 4E2

THE BYLAW ENFORCEMENT OFFICER SAYS THAT HE OR SHE HAS REASONABLE AND PROBABLE GROUNDS TO BELIEVE, AND DOES BELIEVE, THAT THE ABOVE NAMED

ON OR ABOUT 06 05 13 AT THE TIME OF 01:02

AT OR NEAR 8788 McKim Way Mt #2170 CITY OF RICHMOND, PROVINCE OF BRITISH COLUMBIA

DID COMMIT THE OFFENCE INDICATED, UNDER THE FOLLOWING BYLAW

PURBOR Health protection Bylaw No 6989

DESCRIPTION OF OFFENCE	SECTION	FINE AMOUNT
OPERATOR PERMITTING SMOKING	6.11.1 (a) (i)	\$250

IF YOU WISH TO DISPUTE THE ALLEGATION CONTAINED IN THIS TICKET YOU MAY APPEAR AT THE FOLLOWING LOCATION TO GIVE NOTICE OF DISPUTE:

Richmond Provincial Court
2770 Edmonds Way
Richmond BC V6X 2E8

OR DELIVER BY MAIL A NOTICE OF DISPUTE TO THE ABOVE ADDRESS AS DESCRIBED ON THE REVERSE.

THE FINE AMOUNT MAY BE PAID AT THE ABOVE ADDRESS IN ACCORDANCE WITH THE BYLAW BEING IN FORCE AT THIS TIME. (SEE REVERSE)

DISPOSITION: 06 06 16

DATE OF PAYMENT: 06 06 19

Signature: *[Handwritten Signature]*

IF THE FINE IS NOT PAID OR THE ALLEGATION CONTAINED IN THIS TICKET IS NOT DISPUTED (SEE REVERSE) WITHIN 14 DAYS, THIS TICKET WILL BE TREATED AS NOT DISPUTED, YOU MAY BE CONVICTED IN YOUR ABSENCE AND WITHOUT A HEARING AND, UPON CONVICTION, THE FINE AMOUNT WILL BE IMPOSED FOR THE OFFENCE CHARGED.

COURT COPY

06-05-13

1253- AT 8788 McKim Way

Green Element.

1102 - ENTERED AT Green

Element APPROX 50
PATRONS Head count
Done by Steve 46
PATRONS Numerous
Amounts of Pitchers
on Tables Glasses
WITH WHAT APPEARED
TO BE SCOTCH WHISKEY
AND CANS OF BEER
COORS LIGHT
BUDWEISER. GLASSES
USED AS ASHTRAYS.
THREE INDIVIDUALS

06-05-13

NOTED SMOKE.

PRIOR TO ENTRANCE
BAR OUTSIDE NOTICED
TEEN WALKING TO
BUS. INDIVIDUAL
RAN INTO BUSINESS
TO NOTIFY POLICE
ATTENDING. NUMEROUS
CIGARETTE BUTTS NOTED
IN GLASSES AT VARIOUS
TABLES. HEARING DUTY
FAN BEHIND BAR TO
PUMP SMOKE OUT OF
UNIT. WRITER NOTICED
HANDICAP BATHROOM

IS STILL USED AS
A STORAGE AREA.
EDWARD CHEN
WAS INFORMED THAT
IF IT WAS NOT CLEAR
BY NEXT INSPECTION
BUS WOULD BE VISITED
BY BUILDING INSPECTOR
AND LICENSE POSSIBLY
SUSPENDED.

Show Cause Hearing

INFORMATION:

Business: Green Element Restaurant

Address: Unit # 2170-8788 McKim Way, Richmond, BC V6X 4E2

Ref. File #: 05299230

Hearing Date: Wednesday, November 22, 2006

Time: 2:30 p.m.

Location: Room M.1.002, Richmond City Hall, 6911 No. 3 Road, Richmond, BC

History:

Roger Chen has been licenced in the City of Richmond since June 09, 2005, operating as **Green Element Restaurant**, at 8788 McKim Way-Unit # 2170. This business is licenced as an (A1) Assembly Use Group 1, Food Service Establishment with a Food-Primary liquor licence.

Recent information has been received from the Liquor Control and Licensing Branch which shows business is registered. Company name of **Deroye Enterprises Ltd.** dba: **Green Element Dining & Lounge**.

BC Corporate Search done on November 21, 2006, shows the last annual report was filed by this company on November 24, 2005. Current information indicates that Deroye Enterprises Ltd. is active, showing Directors as Roger Yun-Chi Chen; Ken Ke Tang; and Anson Qiang Mai. for this company operating as Green Element Restaurant and here in after referred to as **Green Element**.

Current Information:

Business has violated section 1.2(i) of the Business Licence Bylaw No. 7360, by failing to provide the City of Richmond with a copy of Incorporation Certificate.

This has become a problem business in the little more than one year of this businesses existence. The continuation of offences shows the owners appear to have little or no interest in changing the business practices currently encountering.

This business has received two Municipal Ticket Informations, (MTI's) from the City of Richmond, under the Public Health Protection Bylaw No 6989, sec 6.1.1.1(a) to (k), operator permitting smoking. Only after threat of Court action on second violation did business pay the first fine of \$250.00, imposed by the Court and has not paid the second fine of \$250.00 imposed by the Court.

The business licence issued to this business is an (A1), **Assembly Use Group 1**, business licence for food service with a **food-primary liquor licence**. This allows liquor service, but the predominant focus of the business must be food service. This premise is not a liquor primary establishment whereby, they are not the holders of a liquor primary liquor license, issued by the Liquor Control and Licensing Branch or a City of Richmond licence for liquor service, which would permit liquor only service.

It appears that the main function of this business is to circumvent City of Richmond Bylaws as well as Provincial Liquor Control and Licensing Act and Regulations. By violating the Liquor Control and Licensing Act and Regulations, this business has also violated the **Business Regulations Bylaw No. 7538** and **Business Licence Bylaw No. 7360**, whereby, failing to comply with any provisions of any Bylaw or applicable statute, is also a violation of these Bylaws, by failing to maintain the standard of qualification required for the issuance of their Business Licence.

Information received from Liquor Inspector, Doug Dyck, (**Attachment 1**) Notice Of Enforcement Action by Liquor Control and Licensing Branch, Dated October 05, 2006 shows this business received a contravention notice on **February 25, 2006**, for failing to clear liquor within ½ hour beyond liquor hours, less than 3 months after Liquor License was issued and on the first day an inspection was conducted.

Inspections conducted on **April 9, 2006; May 13, 2006; May 19, 2006; and June 18, 2006** also found this business failed to clear liquor within ½ hour beyond liquor hours, and a total of 14 contraventions of the Liquor Control and Licensing Act and Regulations as defined in **Appendix A of Attachment 1**.

Information received from RCMP Police, Cpl. B. Edwards, (**Attachment 2**) shows 6 attendances made by RCMP. One attendance was as a result of a **stabbing** which occurred just outside premise at 01: 45 hrs on **April 08, 2006** or thereabouts, as it appears there was a delay in contacting Police, and an attempt to clean up the crime scene, with the only possible source of water coming from Green Element.

There are three sets of fire escape corridors from the main floor courtyard to the streets with gates at each entry. These gates are locked with chains and padlocks at night while Green Element Restaurant remains open for business. This is a serious safety issue, which has the potential for serious consequences if a fire were to commence while patrons were inside property complex. Emergency personal would not be able to access this property in case of an emergency. This attempt of padlocking gates appears to be only to prevent authorities from gaining access to business while knowingly violating liquor and business licence requirements and regulations. Business was informed to keep fire escape gates open while business operates, but gates continued to be locked.

Liquor Control and Licensing Branch held a hearing on **September 13, 2006** and released decision on **September 27, 2006**. The decision was a **\$29,500.00 fine** for all mentioned violations listed in the 25 page decision. (**Attachment 3**). This fine was due and payable by **October 17, 2006**.

A little over three days from the release of the decision of the LCLB hearing, an inspection was conducted at **Green Element** by Richmond RCMP Police and Liquor Inspectors. **Green Element** was again found to be in violation of liquor and business licence requirements and regulations.

Detailed report from Liquor Inspector Doug Dyck, shows **Green Element** using “look outs”, where sole purpose is to prevent authority figures from attending **Green Element** without prior knowledge by business. (**Attachment 4**)

Complaint letter received on **September 15, 2006**, signed by 12 business representatives from Cosmo Plaza, referring to various safety issues and the conduct of **Green Element** and it's clientele. Complaints refer to issues such as customers urinating in public, vomit in common area, breakage of glass, vandalism, and intimidation of other business owners. (**Attachment 5**)

Information received from Liquor Inspector, Doug Dyck, (**Attachment 6**) Notice Of Enforcement Action by the Liquor Control and Licensing Branch for **cancellation of liquor licence**. **Green Element failed** to pay monetary penalty of \$29, 500.00 by October 17, 2006. Also, notice refers to some **15 violations** which have not been addressed with enforcement action.

Photos taken at **Green Element** by the undersigned, on joint inspection of May 13, 2006, which show typical business practices of operating like a liquor primary establishment, while permitting patrons full smoking privileges inside premise. Owner installed a blower on ceiling to pull smoke out of establishment. (**Attachment 7**)

Green Element has shown negligent disregard for City of Richmond Bylaws and Provincial Liquor Control and Licensing Act and Regulations. This lack of care and control may also have contributed to the stabbing incident, which occurred directly outside the premise. This business has made no attempt to operate within the requirements and regulations of the Liquor and Business Licences. This leads the undersigned to believe a suspension or cancellation of the business licence is warranted in order to correct the continuation of these offences.

Victor M Duarte
Business Licence Inspector

VMD:vmd

MR. CHEN INFORMATION LETTER

GREEN ELEMENT

To: Connie Lawson, Mayor, City of Richmond

Re: Green Element Restaurant

We are of Chinese decent from Taiwan. However, we have been long time immigrants of Canada, with all of our children being brought up in the Canadian educational system. We have felt welcome and encouragement from all levels of government, but most significantly from the City of Richmond. The flourishing of the Asian community is mainly due to the continuous support from council and I believe the city and the community has seen this as very beneficial for the present and future. We personally have a great interest the restaurant business which is a key attraction in the City of Richmond with it's diversified ethnic food choice and we have put in a great a deal of effort into joining this group of businesses to open our own restaurant, Green Element, with our own unique style of Chinese hometown style recipes and cuisine for the diverse food tastes and culture we have in Richmond. Through the hard work and sweat we have managed stay in business for last two years and served many satisfied Canadians. This restaurant being our first experience as businessman in Canada, we have had a few difficulties due English being our second language and in turn we have had few misunderstanding with the bylaw within the city. But we have put major effort in being customer oriented and fulfilling all their needs at all costs as we have done in our own country. This might have cause a few misunderstandings due to the expectation in different cultures. As an example, there have occasion at the restaurants where customers have ordered alcohol in the premised of the restaurant with a dinner, and have overstayed the hours of operations. Both management (including staff members) have made tremendous effort to courteously tell the customer the hours of operation, however, some minor groups have overstayed their welcome making it difficult for the waiter and waitress to deal. As a last peaceful effort, we have also contacted the local authorities for help dealing with these customers. However, we did not get any aid in this situation. The ownership group which includes investor from company, have sided with the customer as that is the way they have perform in past situations. This had put the current management into very dreadful position. But we have already dealt with the investors and we have their full support on fully cooperating with any city requirements. However, it appears that other members of the city do not require obeying the law put down by the city and province of British Columbia. We have had 5 inspections of our premises, which resulted in very unrewarding experiences. The inspector and his personal were extremely disruptive to management and very rude to all the customers. No reason was given for going through personal cabinets and drawers of staff members. The given excuses included the search for stolen liquor and other items. To our belief, you would require a warrant with enough evidence to perform such a search. Even with all these obvious illegal searches, they have found absolutely nothing to incriminate us. This has demonstrated nothing but brute force and discriminatory conduct by the inspector. The experiences have demonstrated a lack of tolerance for other cultures trying to adapt to this flourishing diverse community. As a small business, this kind of treatment to both staff and customers had left the business shambles. We have had to make every effort to apologize to customer for the maltreatments, and retaining staff that experience such a dramatic search had increased turnover significant.

Due to this we have decided to concede defeat and give up our liquor license. We are now concentrating on serving customers as best as we can with our specialty dishes and deserts. But we continue to receive identical harassing faxes and letters one after the other without care if we have received them or not. Lately, we are even receiving courier and special delivery letters from these harassing and discriminating officers.

So far all we have wanted is immigrate to a more democratic, understanding and tolerant society, for a better life for my family and their family as second generation Canadians. We are trying to build and help our community by opening a small business and contribute to the city not with taxes, but with volunteering within the community and praying to God for peace for everyone for prosperity. But all the current experiences have left us with a bitter taste and unwelcoming feeling. Through encouragement of the customers, local leaders and a few other City of Richmond councilors, we would like you the Mayor to hear our situation and remedy some of the problems as outlined earlier. As representative of all of Richmond, we believe you will be fair and understanding to small business owner like me who is trying to make a better future for his family and community. Also, as a leader for this city, I would hope that you will further a peaceful and non-discriminating resolution can be reached. We have many customers and staff members who are willing to testify to the accounts of aggravation and rudeness demonstrated by the inspector and his team if required. But in spite of this setback we will continue to operate our business to the best of our ability in satisfying all the requirement of the City of Richmond and continue helping building the community.

Sincerely,



Note: This letter was written on behalf of Mr. Chen as a translation.



2170 | 8788 mckim way
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v6x 4e2
f 604 244 7332
Roger Chen

**BUISNESS LICENCE AND PUBLIC HEALTH
BYLAW EXCERPTS**

GREEN ELEMENT

4.5 Miscellaneous Business Licence Provisions

- 4.5.1 Every **licence** is considered to be personally issued to the **licencee**.
- 4.5.2 Where a **business** is carried on by two or more **persons** in partnership, only one **licence**, which must be taken out in the name of the partnership, is required.
- 4.5.3 Subject to the *Local Government Act*, the **Licence Inspector** has the power to grant, issue, renew, suspend or transfer **licences**.

PART FIVE: BYLAW VIOLATIONS AND PENALTIES

- 5.1 Any **licencee**, operator, or any other **person** who:
 - (a) violates or who causes or allows any of the provisions of this bylaw to be violated; or
 - (b) fails to comply with any of the provisions of this, or any other applicable bylaw or statute; or
 - (c) neglects or refrains from doing anything required by this bylaw; or
 - (d) fails to maintain the standard of qualification required for the issuance of a **licence** under this bylaw; or
 - (e) makes any false or misleading statement,

is deemed to have committed an infraction of, or an offence against this bylaw, the **Business Regulation Bylaw** or the **Vehicle for Hire Regulation Bylaw**, whichever is applicable, and is liable on summary conviction, to the penalties provided for in the *Offence Act*, and each day that such violation is caused or allowed to continue constitutes a separate offence, and may result in the suspension, cancellation or revocation of the **licence** in question.

- 5.2 Subject to the *Local Government Act*, **Council** may:
 - (a) revoke or cancel a **licence** issued under the provisions of this bylaw; and,
 - (b) refuse to grant the request of an **applicant** under this bylaw.
- 5.3 Every **licencee** must comply with the requirements of this, or any other bylaw of the **City** which governs or regulates the **business** for which such **licence** was granted, and must comply with any requirements imposed by the **Medical Health Officer**, and any **person** failing to comply with the requirements of this Part is guilty of an infraction of this bylaw and liable to the penalties specified.

- (b) a **second-hand dealer/pawnbroker** may, upon **purchasing a second-hand item**, notify the **Police Chief** in writing of the **second-hand dealer/pawnbroker's** desire to resell or otherwise dispose of such item before the expiration of the 72 hour period, whereupon after giving written notification, the **second-hand dealer/pawnbroker** must hold the article for 24 hours excluding Sundays and statutory holidays, and he may dispose of such item if after that time he has received a written release from the **Police Chief**.

19.2.4 Where **second-hand items** have been **purchased** by a **second-hand dealer/pawnbroker** from another **second-hand dealer/pawnbroker** who has had such items in his possession for a period of time longer than required under clause (b) of subsection 19.2.1, the **Police Chief** may authorize the purchaser in writing to dispose of such items without holding them for that period.

PART TWENTY: TATTOO PARLOUR REGULATION

20.1 Operator Prohibitions

20.1.1 A **tattoo parlour operator** must not permit any person under the age of 18 to be tattooed, unless with the written consent of the person's parent or guardian.

PART TWENTY-ONE: TELEPHONE SALES OFFICE REGULATION

21.1 Operator Obligations

21.1.1 Every **telephone sales office operator** must advise the **Licence Inspector**, in writing, not later than 24 hours after any change has been made to any of the information which must be provided to the **Licence Inspector** to obtain a **telephone sales office licence**, as stipulated in the **Business Licence Bylaw**.

PART TWENTY-TWO: VIOLATIONS AND PENALTIES ✓

22.1 Any **licencee, operator**, or any other person who:

- (a) violates or who causes or allows any of the provisions of this bylaw to be violated; or
- (b) fails to comply with any of the provisions of this, or any other bylaw or applicable statute; or
- (c) neglects or refrains from doing anything required under the provisions of this bylaw or the **Business Licence Bylaw**; or
- (d) fails to maintain the standard of qualification required for the issuing of a **licence**; or
- (e) makes any false or misleading statement.

is deemed to have committed an infraction of, or an offence against, this bylaw or the **Business Licence Bylaw**, whichever is applicable, and is liable on summary conviction, to the penalties provided for in the *Offence Act*, and each day that such violation is caused or allowed to continue constitutes a separate offence and may result in the suspension or cancellation of the **licence**.

PART TWENTY-THREE: ADMINISTRATION AND ENFORCEMENT

- 23.1 The **Licence Inspector, Building Inspector, Medical Health Officer, or Police Chief** are hereby authorized to enter at any reasonable time, the premises of any **business** regulated under this bylaw, to determine whether the provisions of this bylaw are being, or have been complied with; and it is unlawful for any person to prevent or obstruct the **Licence Inspector, Building Inspector, Medical Health Officer or Police Chief** from the carrying out of any of their duties with respect to the administration and enforcement of this bylaw.

PART TWENTY-FOUR: PREVIOUS BYLAW REPEAL

- 24.1 Milk and Cream Products Delivery Regulation Bylaw No. 1118 (adopted May, 1949), is repealed.
- 24.2 Meat and Fish Sale Bylaw No. 1218 (adopted July, 1952), and Amendment Bylaw No. 1411 (adopted June, 1956), are repealed.
- 24.3 Automobile Service Station Closing Hour Extension Bylaw No. 1912 (adopted July, 1962), is repealed.
- 24.4 Discotheque Regulation Bylaw No. 2120 (adopted March, 1965), is repealed.
- 24.5 Shop Closing Exemption Bylaw No. 2194 (adopted November, 1965), is repealed.
- 24.6 Business Regulation Bylaw No. 7148 and the following amendment bylaws are repealed:

<u>BYLAW NO.</u>	<u>ADOPTED ON</u>
Bylaw No. 7172	November 28, 2000
Bylaw No. 7188	December 11, 2000
Bylaw No. 7167	July 23, 2001
Bylaw No. 7284	October 22, 2001
Bylaw No. 7290	November 26, 2001
Bylaw No. 7298	December 10, 2001
Bylaw No. 7316	January 28, 2002
Bylaw No. 7330	March 25 th , 2002
Bylaw No. 7334	April 8 th , 2002
Bylaw No. 7390	July 8 th , 2002
Bylaw No. 7397	July 29 th , 2002
Bylaw No. 7223	October 15 th , 2002
Bylaw No. 7426	October 15 th , 2002
Bylaw No. 7557	January 13 th , 2003
Bylaw No. 7504	June 9, 2003

SUBDIVISION SIX: SMOKING CONTROL AND REGULATION

PART 6.1: AREAS OF SMOKING PROHIBITION

6.1.1 Operator Obligations

6.1.1.1 The **operator** of any of the following:

- (a) a **retail establishment**;
- (b) a **personal services establishment**;
- (c) a **bank or government office**
- (d) a hospital or health clinic;
- (e) a **food service establishment**;
- (f) a **taxicab, or a school or public bus**,
- (g) any part of a building that is generally:
 - (i) open to, and accessible by, the public; or
 - (ii) available for common use by the occupants of such building,

including, but not limited to, hallways, foyers, inside stairways, elevators, escalators, laundry rooms, washrooms, cloakrooms and amenity areas; and

- (h) a **place of public assembly**;
- (i) a billiard/pool hall;
- (j) a casino;
- (k) a **licenced establishment**,

must not permit a person to **smoke** while within any such establishment, office, premises, vehicle, or area, whichever is applicable.

6.1.1.2 The **operator** of a building, establishment or facility owned or leased by the **City**, excluding any rented City-owned one-family dwelling, must not permit any person to smoke in such building.

6.1.1.3 The **operator** of any premises where smoking is not permitted must post signs which comply with the requirements of Part 6.2.