

# Corporate Report

NO: R054

COUNCIL DATE: March 4, 2004



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## REGULAR

TO: Mayor & Council                      DATE: March 2, 2004  
FROM: City Solicitor                      FILE: 0930-30-178  
SUBJECT: City of Surrey - Host Financial Assistance Agreement for  
Fraser Downs Casino with the Province of British  
Columbia

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## RECOMMENDATION

That Council authorize the execution of the Host Financial Assistance Agreement (the "Host Agreement") with the Province, a copy of which is available in the City Solicitor's office.

## BACKGROUND

The Province instituted the payment of a share of gaming revenue from casinos to municipalities in September, 1999. Following the introduction of expanded gaming through the introduction of slot machines by the provincial government in February, 1998 no compensation was paid to local government for approving and hosting a casino. The Province took the position that the BCLC had sole jurisdiction over gaming in British Columbia. A court case involving the City of Surrey (the "City") and the British Columbia Lottery Corporation (the "BCLC") held that the City had jurisdiction over a casino's zoning and business licensing when it was operated by a private sector company on behalf of the BCLC. This decision insofar as it dealt with the constitutional ability of local government to regulate and prohibit casino gaming was upheld by the Court of Appeal.

Following litigation between the City and the Province, a memorandum of understanding was entered into between the Province and the Union of British Columbia Municipalities on June 17, 1999. This memorandum of understanding acknowledged the jurisdiction of local government in the Province over the location of casinos through OCP and zoning powers and the regulation of casinos through business licensing by laws. The memorandum of understanding also recognized the need for local government host financial assistance in exchange for the approval of a casino.

The fees payable to local government are a direct function of the success of the casino to which the Host Agreement is tied. The percentage of revenue paid by the Province to a host municipality is determined by the size of the "Win". Win is the gross amount wagered or bet by gaming patrons less the amount paid out by the gaming machines to patrons as winnings. A standard ten percent (10%) of the Win is paid to municipalities by the Province, less the BCLC fees to casino operators and BCLC operating expenses. This net amount of gaming win paid to local government is approximately six percent (6%) of the gross Win of a casino according to the BCLC.

## DISCUSSION

Calculation of the Province's payments to the City based upon the Host Agreement for Fraser Downs is as follows:

- 10% of Net Gaming Income;

- Net Gaming Income includes the Win from casino games;
- Where the casino's Win is total monies wagered less the amounts paid out to patrons; and
- Net Gaming Income is the Win less:
  - fees payable to service operator, in the City's case Fraser Downs, under the BCLC's agreement with Fraser Downs,
  - BCLC's administrative and operating costs of conducting and operating casino gaming at Fraser Downs in accordance with generally acceptable accounting principles;
- BCLC advises that the 10% of the Net Gaming Income is equivalent to approximately 6% of the total casino Win.

The City's return from the Casino is to be calculated as follows:

- 6% of the Win (Host Agreement);
- 1% to 4% of the Win under the City's Lease to Fraser Downs calculated as follows:
  - 1% of the Win up to \$38.5 Million;
  - 2% of the Win from \$38.5 Million to \$43.8 Million;
  - 4% of the Win greater than \$43.8 Million;
- Annual property taxes.

## Term of Host Agreement

The term of the Host Agreement is to be the same as the BCLC Operating Agreement with Fraser Downs or 20 years including one right of renewal.

## Payments Under the Host Agreement

Payments to the City of the amount equal to 10% of the Casino Net Gaming Income are to be made quarterly. The City must set up a special account to receive the BCLC's payments. Rent received for the use of the City's lands will contribute to the City's general revenue.

## Use of Special Account Monies

The City is required to use the special account monies for "*any purpose that is of public benefit to the Host community*" within its lawful authority. The Province may require the City to provide a report on the receipts and expenditures made under the Host Agreement from its special account. This leaves the City with a very broad scope for use of the monies derived from the Fraser Downs Casino. However, the Council's Gaming Policy requires the following for the use of gaming (casino) revenue:

- No casino revenue will be allocated to the general operating needs of the City except for those required for directly impacted infrastructure and services such as police services, fire services, traffic improvements, etc. Total annual allocation for such services cannot exceed 25% of the annual revenues.

- Minimum of 50% of annual revenues will be allocated for Capital Projects related to arts, libraries, culture and recreation.
- Allocation of casino revenues to "other" Capital Projects throughout the City cannot exceed 25% of annual revenues.

## **CONCLUSION**

The attached Host Agreement provides the mechanism under which the City receives its share of the net revenues from the gaming machines to be operated by the BCLC at Fraser Downs. Staff have been advised by BCLC that the City's share will be equivalent to approximately 6% of the Win where Win is the total amount wagered at a casino less the amounts paid out.

CRAIG MacFARLANE  
City Solicitor

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