



Committee of the Whole Report

For the Meeting of January 31, 2019

To: Committee of the Whole **Date:** January 8, 2019

From: Andrea Hudson, Acting Director, Sustainable Planning and Community Development

Subject: Application for a Lounge Endorsement to a Manufacturer's License (brewing) for Whistle Buoy Brewing Company, 63 – 560 Johnson Street.

RECOMMENDATION

That Council direct staff to provide the following response to the Liquor Licensing Agency:

Council, after conducting a review with respect to noise and community impacts, does support the application of Whistle Buoy Brewing Company, located at 560 Johnson Street, to have a lounge endorsement added to their manufacturing license, having hours of operation from 11:00 am to 12:00 am Thursday – Sunday, 11:00 am to 11:00 pm Monday – Wednesday, and an occupant load of 112 persons.

Providing the following comments on the prescribed considerations:

- a. The impact of noise on the community in the vicinity of the establishment has been considered in relation to the request and assumptions are the noise impacts would be proportional to existing licence capacity in the vicinity. The applicant has committed to operating as a respectful and conscientious neighbour and to avoid disturbances to adjacent businesses and residences. The requested hours of operation are modest and support for the application is not expected to result in disproportionately high negative impacts to the community.
- b. If the application is approved, the impact on the community is expected to be positive economically as the approval supports the business plan and long term viability of the establishment. The business model is seen to align well with recent changes made to zoning bylaws which encourage this type of development. The establishment contributes to the richness, and diversity of offerings in the area.
- c. The views of residents were solicited via a mail out to neighbouring property owners and occupiers within 100 metres of the licensed location and a notice posted at the property. The City received eight letters in response to the request, six in support of the application and two opposed. The applicant has collected and submitted an additional 25 letters of support from residents in the area.
- d. Council recommends the license endorsements be approved.

EXECUTIVE SUMMARY

The purpose of this report is to seek a Council resolution, in accordance with the requirements of the *Liquor Control and Licensing Act*, regarding an application by Whistle Buoy Brewing Company to add a lounge endorsement to their manufacturer's licence and having hours of operation from 11:00 am to 12:00 am Thursday – Sunday, 11:00 am to 11:00 pm Monday – Wednesday, and an occupant load of 112 persons. The application has been reviewed by City staff including Planning, Engineering, Business and Community Relations, Bylaw, and Police. In addition, a public notification process is conducted, as required by the Liquor Licence Policy, to allow individuals and the community to share comments through written correspondence. The application has been reviewed against technical policy, and inputs provided by City staff, and through the public notification process have been considered. The proposal has also been considered in the context of the local vicinity and the City as a whole, all of which are reflected in this report and the resulting recommendation.

Whistle Buoy Brewing Company's application to add a lounge endorsement to their manufacturer's licence, having hours of operation from 11:00 am to 12:00 am Thursday – Sunday, 11:00 am to 11:00 pm Monday – Wednesday, and an occupant load of 112 is not in conflict with the City's current Liquor License Policy. Staff did not identify any technical rationale to oppose the application and the opportunity for public comment has resulted in limited opposition. Police, Bylaw and Business and Community Relations have identified the outdoor patio as a potential source of disruptive noise for neighbours in the vicinity, suggesting earlier closing times for patios may be appropriate. Opportunity for public comment included six letters in support of the application as well as 25 additional letters of support solicited by the applicant. Two letters were received which expressed opposition and no correspondence was received from the community association. Staff have recommended for Council's consideration that a resolution be made regarding the application, and that Council support the application to add a Lounge Endorsement to their Manufacturer's Licence, having hours of operation from 11:00 am to 12:00 am Thursday – Sunday, 11:00 am to 11:00 pm Monday – Wednesday, and an occupant load of 112 persons at 63 – 560 Johnson Street.

PURPOSE

The purpose of this report is to seek Council resolution, in accordance with the requirements of the *Liquor Control and Licensing Act* (the Act), regarding an application by Whistle Buoy Brewing Company to have a lounge endorsement added to their manufacturing license and having hours of operation from 11:00 am to 12:00 am Thursday – Sunday, 11:00 am to 11:00 pm Monday – Wednesday, and an occupant load of 112 persons.

The letter of intent provided in conjunction with the application is included as Appendix A.

BACKGROUND

The Liquor and Cannabis Regulations Branch (LCRB), formerly the Liquor Control and Licensing Branch (LCLB), issues liquor licences under the authority of the *Liquor Control and Licensing Act* and regulations. LCRB determines the category of licence appropriate for the business based on submitted details. In the case of Whistle Buoy Brewing Company, the establishment will have a manufacturing licence with lounge endorsement. The manufacture licence with lounge endorsement is the appropriate licence for the proposed business model and while they are not a food primary, licence conditions do require that food is available while open. Local governments are not referred the manufacturing licence component, but they are referred applications for lounge endorsement, and so at a minimum, the manufacturing component can be approved with no input from local government.

With regard to the application for a lounge endorsement on their manufacturing licence at Whistle Buoy Brewing Company, local government is asked to provide comments and recommendations to the LCRB regarding:

1. The impact of noise on nearby residents.
2. Impact on the community if the application is approved.

A map of the subject property and the immediate area is attached to this report (Appendix B) and illustrates the 100m public notification area targeted for comment.

As noted above, this application is to have a lounge endorsement added to a manufacturing license, having hours of operation from 11:00 am to 12:00 am Thursday – Sunday, 11:00 am to 11:00 pm Monday – Wednesday, and an occupant load of 112 persons. The Liquor and Cannabis Regulations Branch is requesting a resolution from the City of Victoria regarding the application and the review criteria noted above.

ISSUES & ANALYSIS

The following sections will identify the key issues and provide analysis for Council's consideration:

Zoning

The site is zoned for a Brew-Pub which is defined as facilities used for the consumption of beer, spirits, wine or other alcoholic beverages which are produced and manufactured on the premises and which may be provided in combination with Food and Beverage Service or Retail Trade. The zone places no restrictions on occupant loads or hours of operation. The production and manufacturing area for a Brew Pub (beer, spirits, wine) must not be located above the First Storey and is not permitted within six metres of the wall of any Building that abuts a Street or pedestrian walkway, except where the Brew Pub (beer, spirits, wine) is provided in conjunction with Retail Trade or Food and Beverage Service. Production capacity is limited to not more than 35% of the first storey floor area of a Brew Pub (beer, spirits, wine) for the purpose of production and manufacturing of beer, spirits, wine and other alcoholic beverages.

Compliance is demonstrated through application for a building permit and the resulting construction is monitored for compliance through the City inspection process related to the issued building permit.

Noise Bylaw

The City's Noise Bylaw sets forth limits on four key areas within the City which are the Quiet District, Intermediate District, Harbour Intermediate and Activity District. Whistle Buoy Brewing Company is within the Intermediate Noise District and limited to 60 dBA at the point of reception during daytime hours which end at 10:00 pm. During nighttime hours, noise at the point of reception received is limited to 50dBA in Quiet districts, 55 dBA in the Harbour Intermediate and Intermediate districts and 65 dBA in the Activity district. 50 dBA is comparable to rainfall, light traffic or a refrigerator and 60 dBA is comparable to conversational speech or an air conditioner. Where issues of non-compliance exist, Bylaw Officers and Police have authority to order compliance.

The City of Victoria Noise District Map is included for reference (Appendix C).

Vicinity and Municipal Impacts

Predictability of noise related issues or other community impacts, negative or positive in effect, is challenging due to a number of variable factors. The business model, target clientele, quality of owner/operator, existing density of licenced capacity in the area, hours of service, demographics, and fluctuating populations due to tourism factor into predicting the likelihood of noise related issues and impacts on the community.

Consideration of those factors can assist a municipality to predict negative aspects associated with licenced establishments. The factors considered in conjunction with any application approval at time of consideration change over the life of a licenced establishment, and when they do change, and unanticipated issues arise, the fall back to re-establish compliance related to noise and other aspects is to use tools of enforcement. These tools include LCRB enforcement which ensure responsible and appropriate service as required by the terms of the licence with LCRB. The Noise Bylaw can be enforced to bring an establishment into compliance, and police have authority to bring an establishment back into compliance where issues are more complex.

Whistle Buoy Brewing Company's application has been considered with regard to the impact it would have on the community and it's potential to generate noise related issues. The impact has been considered in terms of the vicinity and within the city as a whole. The category of licence required by Whistle Buoy Brewing Company for their operational concept is a manufacturer's licence with lounge endorsement. This type of licence carries a requirement that they must provide, at a minimum, a variety of hot or cold snacks and non-alcoholic beverages during all hours of operation. The establishment is neither a Liquor Primary nor Food Primary but has been compared to both to illustrate the impact it is likely to have in the vicinity.

Vicinity Analysis – Licenced Occupant Load and % Increase							
	Whistle Buoy Seating	Existing Liquor Primary Seats	Increase in Seat Capacity	Existing Food Primary Seats	Increase in Seat Capacity	All Existing Seats	Increase in Seat Capacity
11:00 AM	112	421	26.6%	4,209	2.7%	4,630	2.4%
11:00 PM	112	1,722	6.5%	4,413	2.5%	6,135	1.8%
12:00 AM	112	1,722	6.5%	4,197	2.7%	5,919	1.9%
City Wide Analysis							
	Whistle Buoy Seating	Existing Liquor Primary Seats	Increase in Seat Capacity	Existing Food Primary Seats	Increase in Seat Capacity	All Existing Seats	Increase in Seat Capacity
11:00 AM	112	32,514	0.3%	32,266	0.3%	64,780	0.2%
11:00 PM	112	38,616	0.3%	35,256	0.3%	73,872	0.2%
12:00 AM	112	31,702	0.4%	34,511	0.3%	66,213	0.2%

The local vicinity and the city as a whole have been considered in terms of contributory impact related to occupant load and hours of operation, and the application is seen to be modest in terms of existing licence capacity, and if approved, represents a 1.9% increase to licenced capacity in the evening hours within the vicinity and an increase of 0.2% city wide. Vicinity information is attached as Appendix D.

The hours proposed for licensed service are in keeping with the vast majority of other licenced establishments in the vicinity. Whistle Buoy's proposal and its potential impact on residents in the area is not expected to be significant in terms of contribution to existing conditions in the area. The area is well established as host to a number of licenced venues and the area holds approximately 8% of the City's licenced capacity. While approval will contribute to impacts associated with licenced establishments, the impact is minimal at less than 2%.

City Liquor Licensing Policy

The City's Liquor Licensing Policy directs staff to consider applications for liquor licences having hours of operation not later than 2:00 am. The applicable Council Policy is attached to this report (Appendix E).

The hours of licensed service proposed in this application are within the parameters of the policy.

City Referrals

An inter-departmental review of the project has been undertaken by City staff. The inter-departmental review includes circulation to Planning, Engineering, Community Development, Bylaw, and Police. That review has resulted in the following feedback.

Planning

- The application is supportable as the site is within the Historic Commercial District (Old Town) which envisions a diverse range of active commercial uses and the establishment is zoned appropriately. It also and meets the floor area limitations for the production component associated with the use. Planning has no concerns with the proposed licence application. The use is anticipated in the zone and the patio area is enclosed and on private property, hence it does not affect the public realm.

Engineering

- Transportation related noise impacts or general community impact are not anticipated.

Business and Community Relations

- Business and Community Relations identified the potential issues associated with the proximity of adjacent residences, but also noted the area to be establishment to be host to many licenced establishments. Patios were noted to have more potential to cause noise related impacts to the area and suggested that the patio might close at 11:00pm each day.

Bylaw

- Bylaw identified patios as being a higher potential source for noise related issues.

Police

- Police have also noted the establishment's proximity to residences in the area and have drawn similar attention to the increased potential for noise related issues which could potentially be compounded by the patio. Police identified the area as a well-established destination for a number of licenced establishments. Full Police comments attached separately as Appendix F.

From the perspective of provincial process relative to Food Primaries, midnight can be considered as normal or expected in terms of impacts. LCRB's Food Primary licence category, regardless of occupant load, is not referred to local government for consideration of impacts unless the closing hours are past midnight. This is recognized as a baseline for potential impact associated with the establishment as any Food Primary could occupy the space with no limitations on occupant load and without consideration by local government where hours do not extend beyond midnight.

Community Consultation

In accordance with the City's Liquor Licensing Fee Bylaw and Liquor Licensing Policy, all property owners and occupiers within 100 metres of the applicant's location were solicited by a mailed notice to provide input regarding this application. In addition, Whistle Buoy Brewing Company displayed a notice poster at the entrance for 30 days which invited people to provide input to the City with respect to this application.

A total of eight letters were received, six in support of the application and two expressing concern or opposition. The applicant has also submitted 25 solicited letters of support for the application. Concerns with the application were primarily focused on the noise and other negative behaviours associated with intoxicated persons. The concerns are based on past and current experiences in the area resulting from intoxicated individuals. Correspondence from the Downtown Residents Association DRA was not received. The letters are available in Appendix G.

Applicant Response

As is standard practice as a part of the liquor licence process, after City staff gives input, the applicant has a chance to review the information (and this report) and respond prior to the report being forwarded to Council. After the applicant reviewed City staff comments, the applicant chose to provide additional correspondence related to the staff review. This is available as Appendix H.

In summary, after conducting a review with respect to noise and community impacts and soliciting community views regarding Whistle Buoy Brewing Company's application for a lounge endorsement to be added to their manufacturing license, and having hours of operation from 11:00 am to 12:00 am Thursday – Sunday, 11:00 am to 11:00 pm Monday – Wednesday, and an occupant load of 112 persons, it is considered that the proposal is consistent with current City policy. Therefore, staff recommend that Council consider directing staff to notify the Liquor Licensing Agency that Council supports the application for the addition of a lounge endorsement to the manufacture's license.

IMPACTS

Accessibility Impact Statement

None

Strategic Plan 2015 – 2018

The recommendation to support the application is likely to increase the business viability of the pub, which is consistent with Strategic Plan Objective #5 - *Create Prosperity Through Economic Development*.

Impacts to Financial Plan

None

Official Community Plan

The existing and proposed uses of the lounge endorsement and manufacturing license are consistent with the *Official Community Plan* objectives for this neighbourhood.

CONCLUSIONS

The application for a lounge endorsement to Whistle Buoy Brewing Company's manufacturing license, having hours of operation from 11:00 am to 12:00 am Thursday – Sunday, 11:00 am to 11:00 pm Monday – Wednesday, and an occupant load of 112 persons is not in conflict with the

City's current liquor licensing policy. The area is established as a home to a diverse mix of densified commercial and residential uses. Potential impacts related to the establishment if approved, are therefore more predictable as impacts will be proportional to existing licenced capacity in the area. The establishment has proposed hours common to others in the area, further supporting the conclusion that impact is predicted to be minimal. The site is appropriately zoned for the use and hours of operation are consistent with others in the area, and therefore, staff recommend for Council's consideration that a resolution be made regarding the application and that Council support the application for lounge endorsements for Whistle Buoy Brewing Company.

ALTERNATE MOTION (No Support)

That Council, after conducting a review with respect to noise and community impacts regarding the application to add lounge endorsements to the manufacturing licences of Whistle Buoy Brewing Company, at 63 – 560 Johnson Street, does not support the request for the amendment.

Respectfully submitted,


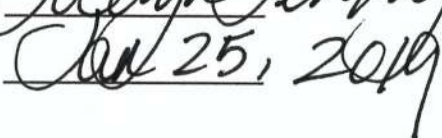

Ryan Morhart
Manager
Permits & Inspections



Andrea Hudson
Acting Director
Sustainable Planning & Community Dev.

Report accepted and recommended by the City Manager:

Date:



25, 2019

List of Attachments

- Appendix A: Rationale Letter
- Appendix B: Site Map
- Appendix C: Noise District Map
- Appendix D: Vicinity Map
- Appendix E: Council Policy
- Appendix F: Police Comments
- Appendix G: Public Response from 30 day posting
- Appendix H: Applicants Comments
- Appendix I: Provincial Liquor License Types