



Committee of the Whole Report

For the Meeting of March 28, 2019

To: Committee of the Whole **Date:** February 28, 2019

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

Subject: Application for a Change to Hours and Occupant Load Increase for Refuge Tap Room's Liquor Primary License at 832 Fort Street

RECOMMENDATION

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

1. Council, after conducting a review with respect to noise and community impacts, does support the application of Refuge Tap Room located at 832 Fort Street having hours of operation from 11:00 am to 12:00 am Sunday through Thursday and 11:00 am to 1:00 am Friday and Saturday with outdoor patio areas having hours not later than 10:00 pm on any day, and an occupant load of 66 persons.

Providing the following comments on the prescribed considerations:

- a. The impact of noise on the community near the establishment was considered in relation to the request and assumptions are the noise impacts would be proportional in comparison to existing licence capacity and associated noise levels in the vicinity. The applicants original request to have closing hours common to both inside seating and outdoor patio seating has been adjusted following review and community input and the applicant supports closing their outdoor patio area by 10pm daily to minimize potential impacts on the adjacent residents. Hours requested for the interior space are similar to others in the area, and restricted outdoor hours support expectations that approval is less likely to result in a trend of significant negative impacts to neighbours and 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.
- 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 ten letters in response to the request that included two in support of the application and eight opposed. One letter of opposition included 52 signatures from other tenants in the authors' building agreeing with the opposition stated.
- 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 Refuge Tap Room. The application is to increase existing hours of operation, being 12:00 pm to 11:00 pm daily, to 11:00 am to 12:00 am Sunday through Thursday, 11:00 am to 1:00 am Friday and Saturday, and increase the occupant load from 24 to 66.

The liquor primary licence is currently owned by Refuge Tap Room, and was previously owned by Terroir Tea Salon, which had licenced capacity for 24 persons in this location. Terroir Tea Salon is no longer in business and the licence has been transferred through the Liquor and Cannabis Regulation Branch (LCRB) to Refuge Tap Room. Refuge Tap Room is not currently operational as work to complete the new interior is currently in progress and other permit approvals are obtained.

Refuge Tap Room's application was reviewed by City staff including Planning, Engineering, Business and Community Relations, Bylaw, and Police. In addition, a public notification process was conducted, as required by the Liquor Licence Policy, to invite public comments through written correspondence. The application was evaluated using City policy, comments provided by City staff, and comments received through the public notification process. 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.

Refuge Tap Room's establishment consists of interior space and an exterior patio area. The application is consistent with the City's Liquor License Policy. However, the patio area is immediately adjacent to a 13-storey residential building and the limited interface distance is likely to cause issues related to noise generated by patrons on the outdoor patio. Staff have identified the patio's proximity to residences as a likely source of noise related issues. Opportunity for public comment included two letters in support of the application, and eight opposed. One letter of opposition included a list of 52 signatories confirming the opposition, and no correspondence was received from the Downtown Residents Association at the time of writing this report.

After reviewing staff comments and community feedback, the applicant supports an adjusted closing time separate from the interior space for the 24-person outdoor patio at the rear of the building. The earlier closing time supported by the applicant and staff for the patio is proposed at 10:00 pm daily to minimize impacts on residences situated at the rear of the building.

Given the earlier closing time of the patio, it is recommended that Council consider supporting the application at 832 Fort Street to change hours to 11:00 am to 12:00 am Sunday through Thursday, 11:00 am to 1:00 am Friday and Saturday, the outdoor patio area having hours not later than 10:00 pm on any day, and an occupant load of 66 persons. The applicant supports staff's recommendation, appreciating the need to reduce impacts on adjacent residences.

PURPOSE

The purpose of this report is to seek a Council resolution, in accordance with the requirements of the *Liquor Control and Licensing Act* (the Act), regarding an application by Refuge Tap Room to increase hours of operation for a liquor license they have acquired from the LCRB.

BACKGROUND

The Liquor and Cannabis Regulations Branch (LCRB) 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 Refuge Tap Room, the

establishment is regulated under a liquor primary licence.

This application is to extend hours of licensed service and increase the occupant load of an acquired liquor primary license for Refuge Tap Room. The letter of intent provided in conjunction with the application is included as Appendix A.

The existing hours of the acquired license are 12:00 pm to 11:00 pm daily with an occupant load of 24 persons distributed as follows; four seats to the outdoor patio area and 20 to the interior area. The application seeks a change to these hours and occupant load, proposing 11:00 am to 12:00 am Sunday through Thursday, 11:00 am to 1:00 am Friday and Saturday, and an occupant load of 66 persons. The distribution of seating would be as follows; 24 on the outdoor patio and 42 inside tenant space. The LCRB is requesting a resolution from the City of Victoria 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.

This licence application follows the transfer of ownership to the new owner, Refuge Tap Room, who has an operational concept that is different from the previous operators. Refuge Tap Room has detailed their vision for the liquor primary licence in a letter of rationale. When business models or ownership change without adjustment to occupant loads or hours of operation, municipalities are not involved in the transfer and are not involved in the change. Refuge Tap Room would be able to carry on with the acquired license under the current licence structure, which includes an occupant load of 24 persons and hours of licenced service from 12:00 pm to 11:00 pm daily. However, as this is a different business model, the applicant is proposing changes to the existing license.

ISSUES & ANALYSIS

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

Zoning

Zoning for the establishment is CBD-1, which permits "drinking establishment," and "restaurant" uses and imposes no restriction on hours or occupant loads. Compliance would be demonstrated through application for a building permit and the resulting construction verified for compliance through the City inspection process related to an 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. Refuge Tap Room is within the Intermediate Noise District and limited to 60dBA 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, 55dBA in the Harbour Intermediate and Intermediate districts and 65dBA in the Activity district. 50dBA is comparable to rainfall, light traffic or a refrigerator and 60dBA 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 fallback 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 additional authority to bring an establishment back into compliance where issues are more complex.

Refuge Tap Room's application has been considered with regard to the impact it would have on the community and its potential to generate noise related issues. The establishment is regulated under a liquor primary licence and has been compared in terms of existing capacity in the vicinity and citywide, for comparison and understanding of likely impact.

Vicinity Analysis – Licenced Occupant Load and % Increase							
Opening & Closing Hours	Refuge Tap Room	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	66	2,443	2.70%	2,058	n/a	4,501	1.47%
12:00 AM	66	3,515	1.88%	2,110	n/a	5,625	1.17%
1:00 AM	66	3,515	1.88%	1,326	n/a	4,841	1.36%
City Wide Analysis							
Opening & Closing Hours	Refuge Tap Room	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	66	32,514	0.20%	32,166	n/a	64,680	0.09%
12:00 AM	66	32,101	0.21%	34,747	n/a	66,848	0.09%
1:00 AM	66	17,866	0.37%	20,811	n/a	38,677	0.17%

The local vicinity and the city as a whole have been considered in terms of impact related to occupant load and hours of operation, and the application is seen to be modest in terms of existing licence capacity. If approved, it represents a 1.36% increase to licenced capacity in the evening hours within the vicinity and an increase of 0.17% citywide. Vicinity information is attached as Appendix D.

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 was undertaken and included circulation to Planning, Engineering, Community and Business Relations, Bylaw, and Police. That review resulted in the following feedback, which supports an earlier closing time for the outdoor patios.

Planning

- The application is supportable as the establishment is zoned appropriately for use as a drinking establishment.

Engineering

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

Community and Business Relations

- Community and Business Relations identified the potential issues associated with the proximity of the patio to adjacent residences, and supports early closing hours, specifically 10:00 pm for the outdoor patio to mitigate impacts of noise from the patio on adjacent residents.

Bylaw

- Bylaw identified similar concerns as Community and Business Relations, noted above.

Police

- Police do not support the application due to resource pressures. Full police comments are available in Appendix F.

The establishment's patio is close to an adjacent apartment building, and is positioned such that any noise will carry directly into any open window on the south facing elevation of the apartment building. While the occupant load on the patio is low by hospitality standards, the patio is proposed to have an occupant load of 18 persons, which is high by residential standards in the context of the patio's position relative to the apartment building north of the patio. The recommendation to close the patio by 10:00 pm daily is consistent with Noise Bylaw times for nighttime noise levels.

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, Refuge Tap Room displayed a notice poster at the entrance for 30 days, which invited input to the City with respect to this application.

Ten letters were received in response, which included two in support of the application and eight opposed. One letter of opposition included 52 signatures from other tenants in the building agreeing with the opposition stated. Notices were mailed to 438 addresses and response 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 and the report. This correspondence is available in Appendix H.

The applicant initially proposed hours common to both the interior and exterior, but the applicant appreciates concerns expressed and agrees that closing the patio area earlier at 10:00 pm would be more appropriate. Correspondence provided by the applicant outlines appreciation for the recommendation and includes additional mitigating measures and operational procedures that will serve to reduce impacts to adjacent neighbours. Primarily, this includes directing and restricting patron and commercial traffic to the front entry off Fort Street. The applicant has also stated that smoking will not be permitted at the rear of the building, and that the rear door to the building would be closed after 10:00 pm when the patio closes.

IMPACTS

Accessibility Impact Statement

Not applicable

Strategic Plan 2019 – 2022

The recommendation to support the application is likely to increase the viability of the pub as a local employer, which is consistent with Strategic Objective #4 – *Prosperity and Economic Inclusion*.

Impacts to Financial Plan

None

Official Community Plan

The proposed license changes are consistent with the *Official Community Plan* objectives for this neighbourhood as the property is located within the Central Business District.

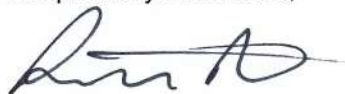
CONCLUSIONS

The application to extend hours and increase the occupant load is supportable where hours of operation are from 11:00 am to 12:00 am Sunday through Thursday, 11:00 am to 1:00 am Friday and Saturday, and the outdoor patio area has hours not later than 10:00 pm, with a total occupant load of 66 persons. Common concerns were expressed through public feedback about the proximity of the patio to adjacent residences and this is addressed in the earlier closing time of 10:00 pm recommended for the patio area. The site is appropriately zoned for the use, is consistent with current City policy, and hours of operation are in keeping with other establishments in the area. Therefore, staff recommend for Council's consideration that a resolution be made supporting Refuge Tap Room's application for increased hours and occupant load to their acquired license.

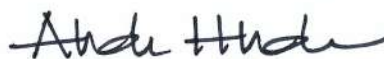
ALTERNATE MOTIONS

1. Council could also support the application of Refuge Tap Room at 832 Fort Street, but with adjustments to hours or occupant loads.
2. That Council, after conducting a review with respect to noise and community impacts regarding the application of Refuge Tap Room, at 832 Fort 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:

Stephen Jenkins
March 22, 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