



Committee of the Whole Report

For the Meeting of August 1, 2019

To: Committee of the Whole **Date:** June 18, 2019

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

Subject: Application for a New Liquor Primary Licence for Leopold's Tavern at 570 Yates 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 Leopold's Tavern located at 570 Yates Street having hours of operation from 9:00 am to 12:00 am daily with a total occupant load of 120 people (100 people indoors and 20 people on the patio).

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 noise impacts are expected to be proportional to existing licence capacity and associated noise levels in the vicinity. The applicant has requested a closing time of 2:00 am daily, which is not supportable due to existing density of licenced seating in the area and higher than average calls for service related to noise and other impacts associated with late night entertainment.
- 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 four letters in response to the notification that went to 899 owners and occupants and all were opposed to the application which included one letter from the Downtown Residents Association.
- d. Council recommends the license be approved with the amended hours.

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 Leopold's Tavern. The application is for a new Liquor Primary licence having hours of operation from 9:00 am to 2:00 am daily with a total occupant load of 120 people (100 people indoors and 20 people on the patio).

Leopold's Tavern 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.

Leopold's Tavern application is consistent with the City's Liquor License Policy; however, significant concern has been brought forward through the staff review of the application. The density of licenced seating in the area is high, generating a higher than average number of calls for service according to police input. Complaints from residents are voiced frequently and are an issue in the area, and while just four letters were received in response to 899 notices, one was from the Downtown Residents Association, outlining their opposition to the application.

After reviewing staff comments and community feedback, the applicant provided direction to move the application forward with the hours of licenced service as requested in the application from 9:00 am to 2:00 am daily. The applicant did reduce the occupant load from 134 to 120 people in response to technical issues with the sidewalk patio which reduced the size of the patio due to dimensional requirements of applicable sidewalk patio policy.

The establishment could be licenced under a food primary licence which would entitle them to provide licenced service from 9:00 am to 12:00 am daily and this licence would not involve referral to local government. The point of significance is that an establishment of any occupant load, not open past 12:00 am does not involve referral to local government and is seen as a baseline for consideration even though the operational requirements of a food primary are different from a liquor primary. Consideration of staff comments and community impacts, and awareness of baseline potential, has resulted in a recommendation that does not support the applicants requested closing time of 2:00 am. To limit impacts to residents in the area, staff recommend having overall hours of operation from 9:00 am to 12:00 am daily applicable to the combined occupant load of 120 persons (100 people indoor and 20 people on the patio).

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 Leopold's Tavern for a Liquor Primary licence.

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 or acceptable for the business based on submitted details. In the case of Leopold's Tavern, the operator is seeking a liquor primary licence. Liquor primary licences allow for a greater level of operational flexibility where a focus on food service is not a condition of operation.

This application is for a liquor primary license for Leopold's Tavern and a letter of intent has been provided that provides information about the business model and is included as Appendix A.

Leopold's Tavern is seeking approval for hours of licensed service from 9:00 am to 2:00 am daily with an occupant load of 120 persons including 100 indoors and 20 on the sidewalk patio. 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.

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. Leopold's Tavern 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 several 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.

Leopold's Tavern has been considered regarding the impact it would have on the community and its potential to generate noise related issues. The establishment proposes licencing 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.

On the 500 block of Yates Street, only one establishment is licenced to provide service until 2:00 am and has an occupant load of 188 people. Approval of Leopold's requested hours would

represent a 53% increase in liquor primary seating available until 2:00 am for all days except Sunday in which case there is no liquor primary seating available past midnight. Business and Community Relations, Bylaw and Police have noted the area as having higher than average numbers of calls for service and noise related issues. This establishment could operate as a food primary licence in which case there would be no referral to local government where the establishment was not open past midnight, and this recognized as the baseline for potential impacts. Proposals for hours beyond midnight are opportunity for local government to reduce impacts where appropriate.

Patios on the 500 Block of Yates Street exist only in association with food primary establishments and all have hours common to both interior spaces and patios. Outdoor patio hours on the street are as follows; Fiamo Italian Kitchen and Dylan's Sports Bar are licenced until 2:00 am; El Funriture Warehouse is licenced until 1:00 am; and Ferris' Oyster Bar and Chucker Burger Bar are licenced until 12:00 am.

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

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 supports closing hours no later than 12:00 am daily and patio hours not later than 10:00 pm to support increased downtown vitality while managing resident impacts.

Bylaw

- Bylaw shared concerns regarding the applicant's proposal and supports the recommended hours.

Police

- Police do not support the application due to existing issues in the area related to density of licenced establishments and late-night entertainment. Full police comments are available in Appendix F.

The establishment did originally conceive of a patio with a 34 person occupant load which was updated due to dimensional restrictions of the Sidewalk Café permit. The proposal is now for a reduced occupant load of 20 persons with 100 indoors for a total occupant load of 120 persons.

Community and Business Relations recommend that patio hours are restricted to 10:00 pm daily to support increased downtown vitality while managing residential impacts. This is not reflected in the recommendation as the occupant load on the patio is small and limited public concern was expressed in relation to the public notification which proposed a 2:00 am closing time and no other patio on the 500 Block of Yates Street has closing hours imposed that are less than midnight. Additionally, this operator or other new establishments could operate under a food primary licence in which case the patio could operate until midnight with no referral to local government. For these reasons, it is thought to be consistent with other approvals and likely to have minimal impacts to having closing hours of midnight for the 20 person patio.

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, Leopold's Tavern displayed a notice poster at the entrance for 30 days, which invited input to the City with respect to this application.

Four letters were received in response, all of which were opposed, and included one from the Downtown Residents Association. Letters were sent to 899 owners and occupants within 100 metres of the establishment, 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. The applicant was notified of concerns brought forward through the City Staff review pertaining to the hours proposed, which are 9:00 am to 2:00 am daily in the 500 block of Yates Street. The applicant responded and requested staff to proceed with community notification based on original hours proposed.

Following public notification, the applicant was again given opportunity to review this report in addition to community feedback and the applicant chose to provide additional correspondence related to the staff review and the report. The applicant does not support the recommendation and has provided counter points for consideration. Correspondence received does not address the cumulative impacts of the requested licence approval, if approved, which would increase the liquor primary capacity on this street. Transferability of the licence to another operator of unknown quality is a reality if Leopold's should discontinue business, and issues associated with a higher density of licenced seating in the 500 Block of Yates cannot be negated by reference to the current operator as licences are lasting and transferable. This correspondence is available in Appendix H.

IMPACTS

Accessibility Impact Statement

The establishment is accessible at ground level and meets accessibility requirements of the BC Building Code.

Strategic Plan 2019 – 2022

The recommendation to support the application is likely to increase the viability of the business 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 is consistent with the *Official Community Plan* objectives for this neighbourhood as the property is located within the Core Historic District which permits commercial and mixed uses.

CONCLUSIONS

The application for a new liquor primary licence is supportable where hours of operation are from 9:00 am to 12:00 am daily with a total occupant load of 120 people (100 people indoors and 20 people on the patio). Staff and community concern make the applicant's proposed 2:00 am closing time unsupportable due to density of licenced capacity in the area and above average levels of calls for service and noise related issues associated with late night entertainment. The site is appropriately zoned for the use, is consistent with current City policy, and staff's recommended amendment to hours of operation are in keeping with other establishments in the area. Staff recommend for Council's consideration that a resolution be made supporting the hours of operation from 9:00 am to 12:00 am for Leopold's Tavern.


ALTERNATE MOTIONS

1. Council could also support the application of Leopold's Tavern as requested having hours of 9:00 am to 2:00 am daily and an occupant load of 120 people (100 people indoors and 20 people on the patio).
2. That Council, after conducting a review with respect to noise and community impacts regarding the application of Leopold's Tavern, at 570 Yates Street, does not support the application in its entirety.

Respectfully submitted,



Ryan Morhart
Manager, Permits & Inspections



Andrea Hudson, Acting Director
Sustainable Planning & Community Dev.

Report accepted and recommended by the City Manager:


Date: July 24, 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