



Committee of the Whole Report

For the Meeting of February 20, 2020

To: Committee of the Whole **Date:** January 20, 2020

From: Karen Hoesle, Director, Sustainable Planning and Community Development

Subject: Application for a Change to Hours for Wind Cries Mary, Food Primary License at #103 - 45 Bastion Square.

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 Wind Cries Mary located at #103 – 45 Bastion Square having hours of operation from 9:00 am to 2:00 am daily with the existing occupant load of 99 people.

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 negligible considering established licence capacity and comparability of hours of other licenced establishments in the area. The requested hours of operation in conjunction with the existing occupant load are not expected to result in 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.
- c. If the application is approved, it is not expected to result in the service area being operated in a manner contrary to the primary purpose.
- d. The views of residents were solicited via a mail out which included 501 letters to neighbouring property owners and occupiers within 100 metres of the licensed location and a notice was posted at the property. The City received two letters in response to the request, both of which opposed the application and included one from the Downtown Residents Association.
- e. 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 Wind Cries Mary. The application is to adjust existing hours, 9:00 am to 12:00 am daily to 9:00 am to 2:00 am daily. The existing occupant load is not proposed to change and is 99 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 was 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.

Wind Cries Mary's application to change existing hours to 9:00 am to 2:00 am daily with an existing occupant load of 99 is supportable based on the City's current Liquor License Policy. The proposal is not anticipated to result in significant impacts to the area. Police note the importance of fulfilling obligations to serve food associated with the terms and conditions of a food primary licence and express concern for resulting pressure on police resources from the incremental extension of hours in the area. Opportunity for public comment included two letters, both opposed to the application. Staff have recommended for Council's consideration that a resolution be made regarding the application, and that Council support the application to change hours of operation to 9:00 am to 2:00 am daily with an occupant load of 99 persons at #103 - 45 Bastion Square.

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 Wind Cries Mary to increase hours of operation associated with their existing food 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 for the business based on submitted details. In the case of Wind Cries Mary, the establishment is regulated under a food primary licence.

This application is to extend hours of licensed service with no change to occupant load of an existing food primary license for Wind Cries Mary. The letter of intent provided in conjunction with the application is included as Appendix A.

The existing hours are 9:00 am to 12:00 am daily with an existing occupant load of 99 persons. The application seeks a change to the hours and not the occupant load, proposing 9:00 am to 2:00 am daily. 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.
3. Whether the amendment will result in the service area being operated in a manner that is contrary to the primary purpose.

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 Old Town District 1, which permits "drinking establishments," 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. Wind Cries Mary 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.

Wind Cries Mary's application has been considered regarding the impact it would have on the community and its potential to generate noise related issues. The establishment is regulated under a food primary licence and has been compared in terms of existing capacity in the vicinity and citywide, for comparison and understanding of likely impact.

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 6.7% increase to licenced seating capacity in the evening hours within the vicinity and an increase of 0.8% 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.

Planning

- The application is supportable as the establishment is zoned appropriately for use as a restaurant, also allowing for liquor consumption.

Engineering

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

Community and Business Relations

- Community and Business Relations has noted the location of the venue is in the centre of the entertainment area of the downtown and unlikely to result in impacts to residents if open until 2:00 am. The area has a concentration of active hospitality venues that are licenced with similar hours and extension of hours will contribute to the density of available seating in the area in the later hours of the evening. LCRB requires that the service of food is the primary business focus of food primary licences and emphasis on the point is important for establishments with later licenced hours.

Bylaw

- Bylaw has not identified concerns associated with application.

Police

- Police note the importance of ensuring that primary focus of the business to serve food is maintained in the later hours of the evening. Also noted, extension of hours and the resulting increase in density of seating in the area can pressure available resources. Full police comments are available in Appendix E.

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 to the 501 letters sent, Wind Cries Mary 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 two letters were received, both of which opposed the application and one was a letter from the Downtown Residents' Association. The letters are available in Appendix F.

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 provided additional correspondence related to the report. The letters are available in Appendix H.

IMPACTS

Accessibility Impact Statement

Not applicable

Strategic Plan 2019 – 2022

The recommendation to support the application is likely to increase the viability of the hotel 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 Old Town, Core Historic designation which permits commercial, visitor accommodation and other mixed uses.

CONCLUSIONS

The application to change hours at Wind Cries Mary from 9:00 am to 12:00 am daily, to 9:00 am to 2:00 am daily with no change to the existing occupant load of 99 people is not in conflict with the City's current liquor licensing policy. Staff recommend for Council's consideration that a resolution be made regarding the application and that Council support the application for proposed hours for Wind Cries Mary at #103 - 45 Bastion Square.

ALTERNATE MOTIONS

1. That Council, after conducting a review with respect to noise and community impacts regarding the application of Wind Cries Mary, at #103 - 45 Bastion Square, does not support the request for the amendment.

Respectfully submitted,



Ryan Morhart
Manager, Permits & Inspections



Karen Hoese, Director
Sustainable Planning & Community Dev.

Report accepted and recommended by the City Manager:


Date: Feb 11, 2020

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