



Committee of the Whole Report

For the Meeting of February 11, 2021

To: Committee of the Whole **Date:** November 23, 2020

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

Subject: Application for a Structural Change to a Manufacturing Licensee's Lounge Endorsement to Increase the Occupant Load to License a 99 Person Rooftop Patio for Herald Street Brew Works at 506 Herald 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 Herald Street Brew Works located at 506 Herald Street for a rooftop patio where the occupant load is 99 people and hours of operation for the rooftop patio are from 9:00 am to 10:00 pm Sunday through Thursday and 9:00 am to 11:00 pm on Friday and Saturday.

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. Herald Street Brew Works is licenced under a manufacturers licence and service of alcohol to patrons is done through a lounge endorsement. Service of alcohol cannot exist in absence of the manufacturing licence. The recommended hours of operation balance the concerns heard about potential noise related impacts to nearby residents with considerations around the business proposal to licence new outdoor seating. Approval of the licence is not expected to result in unacceptable levels of noise attributable to the operations of the establishments outside seating areas.
- b. If the application is approved, it is anticipated to have a positive economic impact on the community as the approval supports the business's plan to provide a unique and local craft beer experience, and employment in the city.
- c. The views of residents were solicited through a mailout to neighbouring property owners and occupiers within 100 metres of the licensed location (a total of 378 notices) and a notice posted at the property. In response to the notification, the City received 40 pieces of correspondence. Six letters stated opposition which included one from the Downtown Residents Association. In support of the application, 34 letters were received.
- d. Council recommends the licence 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 Herald Street Brew Works. The application is for a structural change to a lounge endorsement for a manufacturing licence to add a rooftop patio having an occupant load of 99 people, with hours of operation from 9:00 am to 12:00 am Sunday through Thursday and 9:00 am to 1:00 am Friday and Saturday.

The application was evaluated against City policy, staff commentary, and feedback 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.

Herald Street Brew Work's application is consistent with the City's *Liquor Licensing Policy* and the recommended hours of operation are based on input received through the review process. Staff recommend that Council consider hours from 9:00 am to 10:00 pm Sunday through Thursday and 9:00 am to 11:00 pm on Friday and Saturday to minimize anticipated impacts to nearby residents resulting from the rooftop patio. The owner maintains the requested hours and is confident that Herald Street Brew Works would be able to manage the outdoor seating area without impact to nearby residents and draws on his reputation as a local operator in support of this.

The recommended hours look to achieve a balance between the needs of the business and nearby residents. It will also provide the opportunity to assess any impacts resulting from operation of the outdoor seating area which could further inform the appropriateness of expanding hours in the future.

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 Herald Street Brew Works for a structural change to a lounge endorsement for a manufacturing licence. The proposal is to add a rooftop patio with an occupant load of 99 people, and having hours of operation from 9:00 am to 12:00 am Sunday through Thursday and 9:00 am to 1:00 am Friday and Saturday.

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.

Herald Street Brew Works has included a letter of intent which provides information about the business model and is included as Appendix A. 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.

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 Herald Street Brew Works, the establishment is licenced under a manufacturing licence with a lounge endorsement for service areas. The lounge component cannot exist without the manufacturer's

licence and could not become a liquor primary establishment without application to LCRB and referral to local government.

ISSUES & ANALYSIS

The following sections identify 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 conceptually 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. Herald Street Brew Works 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 50 dBA 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 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.

Herald Street Brew Works' proposal has been considered regarding the impact it could have on the community and its potential to generate noise related issues. The establishment proposes to provide licenced service to the rooftop patio area which has an occupant load of 99 people. The rooftop patio is atop a two-storey building in the downtown area and approximately 20m from the recently constructed Ironworks, multifamily residential building and each of these uses are anticipated under zoning. The proximity of the uses has resulted in recommended hours that are less than those proposed by the applicant. Recommended hours will reduce noise related impacts to residents, balancing the interests of the business with those of nearby residents.

Staff concerns were shared with the applicant prior to the public notification and the applicant was given opportunity to adjust their proposed hours based on the public feedback. As owners and operators of The Drake at 517 Pandora, and based on their reputation, experience and proven ability to responsibly operate the hours requested without significant impact to residents, the owner opted to move forward with public notification to gauge community perspective based on the hours proposed.

If approved, the increased licenced capacity of 99 people results in a total occupant load of 277 people. There are 3,780 licenced seats in the vicinity and the increase off 99 people is a 2.6% increase to licenced capacity in the area. The impact of this increase is reduced by the recommended closing time. 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 Sustainable Planning & Community Development, Engineering & Public Works, Community & Business Relations, Bylaw Services, and Police. That review resulted in the following feedback.

Sustainable Planning & Community Development

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

Engineering & Public Works

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

Community & Business Relations

- Community and Business Relations supports closing hours of 10:00 pm daily for the patio.

Bylaw Services

- Bylaw did not provide comment regarding the application.

Police

- Police support closing hours of 10:00 pm daily for the patio. Full police comments are available in Appendix F.

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, Herald Street Brew Works displayed a notice poster at their entrance for 30 days, which invited input to the City with respect to this application.

The City received 40 pieces of correspondence in reply to the notification that went to 378 owners and occupants. Six letters stated opposition which included one from the Downtown Residents Association. In support of the application, 34 letters were received. Correspondence received is available in Appendix G.

Applicant Response

As is standard practice as a part of the liquor licensing process, after City staff provides feedback, and after the public notification is complete, the applicant has a chance to review this report and respond prior to the report being forwarded to Council. The applicant provided additional correspondence and has also forwarded a letter of account from their project architect regarding a meeting with the developer of the adjacent Ironworks development in January of 2019. 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 existing and proposed uses of the lounge endorsement and manufacturing licence are consistent with the Official Community Plan objectives for this neighbourhood.

CONCLUSIONS

The application for a structural change to a lounge endorsement for a rooftop patio with an occupant load of 99 people is supportable where hours of operation for the outdoor patio area are from 9:00 am to 10:00 pm Sunday through Thursday and 9:00 am to 11:00 pm on Friday and Saturday with a total occupant load for the establishment that is 277 people.

The site is appropriately zoned for the use, is consistent with current City policy, and staff recommend for Council's consideration that a resolution be made supporting the recommended outdoor patio hours for Herald Street Brew Works.

ALTERNATE MOTIONS

Option One – As proposed by Applicant

That Council support the application of Herald Street Brew Works, at 506 Herald Street, for a rooftop patio, having hours of operation from 9:00 am to 12:00 am Sunday through Thursday and 9:00 am to 1:00 am Friday and Saturday with an occupant load of 99 people.

Option Two – Non-support

That Council, after conducting a review with respect to noise and community impacts regarding the application of Herald Street Brew Works, at 506 Herald Street, does not support the application.

Respectfully submitted,

Ryan Morhart
Manager, Permits & Inspections

Karen Hoese, Director
Sustainable Planning & Community Dev.

Report accepted and recommended by the City Manager.

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 Licence Types