



Committee of the Whole Report For the Meeting of May 13, 2021

To: Committee of the Whole **Date:** April 9, 2021

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

Subject: Application for a Structural Change to a Manufacturing Licensee's Lounge Endorsement to Increase Interior and Exterior Patio Floor Space and Increase the Associated Occupant Load for Whistle Buoy Brewing Company at #63 – 560 Johnson Street.

RECOMMENDATION

That Council direct staff to provide the following response to the Liquor and Cannabis Regulation Branch:

1. That Council, after conducting a review with respect to noise and community impacts, does support the application of Whistle Buoy Brewing Company at #63 – 560 Johnson Street for a structural change to a lounge endorsement for a manufacturing licence, to increase the interior and exterior floor areas to allow for an increase the occupant load by 55 people, with existing hours of operation from 11:00 am to 11:00 pm Monday through Wednesday and 11:00 am to 12:00 am Thursday through Sunday.

The following comments are provided on the prescribed considerations:

- a. The impact of noise on the community near the establishment was considered in relation to the request. Whistle Buoy Brewing Company 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. Approval of the licence is not expected to result in unacceptable levels of noise.
- 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 and a notice posted at the property. In response to the notification that went to 1,352 owners and occupants, the City received 96 pieces of correspondence, and 93 letters stated support which included one from the Downtown Residents Association and 3 letters expressed opposition.

- 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 Whistle Buoy Brewing Company at #63 – 560 Johnson Street. The application is for a structural change to a lounge endorsement for a manufacturing licence. The proposal is to increase the interior and exterior floor areas to increase the occupant load by 55 people, with existing hours of operation from 11:00 am to 11:00 pm Monday through Wednesday and 11:00 am to 12:00 am Thursday through Sunday.

Whistle Buoy Brewing Company's application was evaluated against City policy, staff commentary, and feedback received through the public notification process. It has also been considered in the context of the local vicinity and the City as a whole and is consistent with the City's Liquor License Policy. It is recommended that the application of Whistle Buoy Brewing Company's be supported as proposed.

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 Whistle Buoy Brewing Company (WBBC) for a structural change to a lounge endorsement for a manufacturing licence at #63 – 560 Johnson Street. The LCRB is requesting a resolution from the City of Victoria regarding:

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

WBBC is seeking approval for an increase to the interior and exterior patio floor areas for an occupant load increase of 55 people with existing hours of operation from 11:00 am to 11:00 pm Monday through Wednesday and 11:00 am to 12:00 am Thursday through Sunday. A letter of intent has been provided with 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.

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 WBBC, 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 provide Council with information, analysis and recommendations for consideration of the Council resolution to the LCRB.

Zoning

The site is zoned for a Brew-Pub which is defined as follows:

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 (OTD-1) places no restrictions on occupant loads or hours of operation. Location and siting requirements for the zone require, 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 would be demonstrated through an application for a building permit and the resulting construction would be verified for compliance through the City inspection process related to an issued building permit.

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 and is attached to this report (Appendix C). The hours of licensed service proposed in this application are within the parameters of the policy.

For reference, in terms of hours of liquor service, applications for food primary licences (as opposed to liquor primary licenses) are entitled to closing hours of 12:00 am and the occupant load is limited only by washrooms or parking, with no referral to local government. This is notable as it creates an unintended baseline of standard hours for licenced establishments.

Impact Assessment

As part of the liquor primary license application review, the LCRB is requesting a resolution from the City of Victoria regarding noise impacts, specifically on nearby residents, as well as the overall impact on the community if the application is approved.

To understand the impact WBBC would have on the community and its potential to generate noise related issues, the application has been compared to the existing licensed capacity both in the vicinity and citywide. If approved, the licenced capacity increase of 55 people is a 1.25% increase in licenced capacity in the vicinity. Vicinity information is attached as Appendix D.

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. WBBC 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 E).

Noise related issues and other community impacts, negative or positive in effect, are challenging to predict as there are a number of variables that need to be considered. This includes 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.

Consideration of these factors can assist a municipality to predict negative aspects associated with licenced establishments; however, these factors can also change over the life of a licenced establishment. 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 including:

- LCRB enforcement, which ensures responsible and appropriate service as required by the terms of the licence with LCRB;
- Noise Bylaw enforcement by Bylaw Officers; and
- where issues are more complex, the Police have additional authority to bring an establishment back into compliance.

Approval of the licence is not expected to result in unacceptable levels of noise.

City Referrals

An inter-departmental review of the project is conducted prior to public notification. The review for the structural changes to the manufacturers licence at #63 – 560 Johnson Street 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 are supportive of the proposal.

Bylaw Services

- Bylaw did not provide comment regarding the application.

Police

- Police are supportive of the application. 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 (a total of 1,352 notices) were solicited by a mailed notice to provide input regarding this application. Both the public notification and the poster reflected the application's proposed increase of 55 people within existing hours.

In terms of community feedback, the City received 96 letters in response to the notification, representing a response rate of 7.1%. Three letters expressed concern and 93 letters expressed support, including a letter from the Downtown Residents Association,

The letters of response are included in Appendix G.

Applicant Response

As a part of the liquor licence process, it is standard practice to provide the applicant with an opportunity to consider public feedback and to respond to this and the report prior to the report being forwarded to Council. Based on the evaluation of the application, the applicant was advised that the recommendation to Council would be support.

In response, the applicant has chosen to provide additional correspondence to provide additional assurances of their commitment to be a responsible operator and positive business community member.

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 WBBC, for a structural change to a lounge endorsement for a manufacturing licence at #63 – 560 Johnson Street, to increase the interior and exterior floor areas to allow for an increase the occupant load by 55 people, with existing hours of operation from 11:00 am to 11:00 pm Monday through Wednesday and 11:00 am to 12:00 am Thursday through Sunday, is considered supportable. The site is appropriately zoned for the use, and is consistent with current City policy.

ALTERNATE MOTIONS

1. That Council, after conducting a review with respect to noise and community impacts regarding the application of Whistle Buoy Brewing Company, at #63 – 560 Johnson 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: _____

Date: _____

List of Attachments

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