



Committee of the Whole Report For the Meeting of December 2, 2021

To: Committee of the Whole **Date:** August 25, 2021

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

Subject: Application for a Permanent Change to Hours of Liquor Service for a Food Primary Licence for Cenote at 768 Yates 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 Cenote located at 768 Yates Street to extend hours of operation by one hour daily to 11 am to 1 am Sunday to Thursday, and to 11 am to 2 am Friday and Saturday, with no change to the existing total occupant load of 110 people.

The following comments are provided regarding the prescribed considerations:

- a. The impact of noise on the community near the establishment was considered in relation to the request, and the proposed hours, occupant load, and location are compatible with the area. 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 viability of the business as a local employer.
- 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 716 owners and occupants, the City received four letters in response to the notification. Two letters opposed the extension of hours and two were supportive, including a letter of support from the Downtown Residents Association.
- 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 Cenote at 768 Yates Street. The application is to increase hours of licensed service for a Food Primary licence and proposes hours of licensed service from 11 am to 1 am Sunday to Thursday, and 11 am to 2 am Friday and Saturday with a total occupant load of 110 people. This represents closing times that are one hour later than the current hours of operation. The total occupant load of 110 people remains the same.

Cenote'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 is consistent with the City's Liquor Licensing Policy. On this basis, it is recommended that the application of Cenote at 768 Yates Street 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*, regarding an application by Cenote to make permanent changes to their hours of licensed service for their Food Primary licence at 768 Yates 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.
3. Whether the amendment will result in the service area being operated in a manner that is contrary to the primary purpose (only for food primary).

Cenote is seeking approval for hours of licensed service from 11 am to 1 am Sunday to Thursday, and 11 am to 2 am Friday and Saturday; the current hours are from 11 am to 12 am Sunday to Thursday, and 11 am to 1 am Friday and Saturday. The total occupant load of 110 people would remain unchanged. 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.

ISSUES & ANALYSIS

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

LCRB Jurisdiction

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.

The LCRB issues food primary licences to businesses where the primary purpose is the service of food, and where liquor is being served in the service area. Food primary licence applications are only referred to local government by LCRB when hours later than 12 am are proposed or a patron participation endorsement is proposed. Food primary licences that do not propose hours later than 12 am or a patron participation endorsement are not referred to local government and the occupant load is limited only by washrooms or other local requirements such as parking.

In the case of Cenote, the operator is seeking a permanent change to an existing Food Primary licence.

City Liquor Licensing Policy

The City's Liquor Licensing Policy (2017) (included as Appendix E), provides direction on a number of matters including: which applications the City will opt out of reviewing and commenting on; the procedures for the application process for those the City has not opted out of commenting on; and the approach to enforcement. The policy further indicates that applications for liquor licences having hours of operation later than 2 am will not be considered (with the exception of New Year's Eve).

The hours of licensed service proposed in this application for Cenote at 768 Yates Street are within the parameters of the City's policy.

It is noted that, in response to Council's strategic plan objective "to create a Municipal Alcohol Policy", staff are working to report back to Council by December 2021. This work will include consideration of the current Liquor Licensing Policy.

Zoning

Zoning for the establishment is CBD-1, Central Business District-1 Zone and is Development Permit Area DPA 2(HC), which permits the uses of *food and beverage service and drinking establishments*; hours and occupant loads are unrestricted by the zoning. Compliance would be demonstrated through the building permit process and verified through the City inspection process.

City Referrals

An inter-departmental review of the application is conducted prior to public notification. Review of the proposed extension of hours for the food primary license at 768 Yate Street resulted in the following feedback.

Sustainable Planning & Community Development

- The application is supportable as the establishment is zoned appropriately for use as a *food and beverage service and drinking establishment*.

Engineering & Public Works

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

Community & Business Relations

- Community & Business Relations has commented that the location is an area where concentration of late-night venues is not high and direct impacts from the establishment are unlikely to affect nearby residents to the west at 728 Yates Street and beyond.

Bylaw Services

- Bylaw did not provide comment regarding the application.

Police

- Police have noted that the hours proposed for this food primary licence are similar to other late-night venues where food is not the primary focus of the business such as nightclubs. Police have also noted some concern for noise resulting from extension of hours. 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 716 notices) were solicited by a mailed notice to provide input regarding this application. The notice was also sent to the Downtown Resident's Association. The public notification letter and poster reflected the application's proposed hours and occupant load. The comment period was open for a total of 30 days.

In terms of community feedback, the City received four letters in response to the notification: two of the responses expressed concern regarding the extension of hours and two responses were supportive of the extension of hours, including a letter of support from the Downtown Residents Association.

The public letters of response are included in Appendix G and the letter from the Downtown Residents Association is included as Appendix H.

Impact Assessment

As part of the license application review, the LCRB has referred this application to the City of Victoria to review and provide comments regarding noise impacts and the overall impact on the community if the application is approved, and whether the amendment will result in the service area being operated in a manner that is contrary to the primary purpose (only for food primary).

Noise and other community impacts are challenging to predict and there are several variables that can contribute to the level of impact including the business model, target clientele, quality of owner/operator, existing density of licenced capacity in the area, hours of service, and fluctuating populations due to tourism.

Cenote is located in the Central Business District of the Downtown Core and is appropriately zoned for this use. Based on the City's Noise Bylaw, this site is within the Intermediate Noise District and is subject to the noise limits prescribed for this district.¹ The Noise District Map is included in Appendix D.

To understand Cenote's potential to contribute to noise related issues, the application has been assessed against the existing licensed capacity in the vicinity, which includes the block of the establishment and adjacent blocks. If approved, the proposed extension of hours, with a licenced

¹ The Noise Bylaw sets limits for four key areas within the City: Quiet District, Intermediate District, Harbour Intermediate and Activity District. The Intermediate Noise District is limited to 60dBA at the point of reception until 10 pm; after 10 pm, noise at the point of reception is limited to 50dBA in Quiet districts, 55dBA in 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.

capacity of 110 people, equates to a 7.2% increase in licenced capacity in the vicinity over the additional hours proposed. Vicinity information is attached as Appendix C.

Cenote has an existing Food Primary license with hours of operation to 12 am on Sunday to Thursday and to 1 am on Friday and Saturday. They have been operating in this location for eight years. The applicant has included a letter of intent, attached as Appendix A, which outlines their business approach and the reason for their request to extend their hours.

LCRB inspects premises regularly to ensure compliance with their regulations and operates within a two-year period of reference with respect to compliance issues, if they exist. Cenote has not had any violations in the two-year reference period.

On this basis, it is not expected that approval of the licence, with closing times that are one hour later than the current hours of operation, will result in unacceptable levels of noise nor is it expected that the amendment will result in the service area being operated in a manner that is contrary to the primary purpose.

Consideration of the factors noted above can assist a municipality to predict negative aspects associated with licensed establishments; however, these factors can also change over the life of a licensed establishment. If 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 include:

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

It is noted that applying for a food primary licence and then operating any area of the business as a bar or nightclub circumvents the LCRB approval process and is a serious contravention.

Applicant Response

As a part of the liquor licence process, it is standard practice to provide the applicant with an opportunity to review this report and its recommendation including feedback from the public notification and other attachments so they may respond to the report prior to the report being forwarded to Council.

In response, the applicant has chosen to provide additional correspondence, which is attached as Appendix I.

IMPACTS

Accessibility Impact Statement

As the establishment is an existing building, current accessibility requirements may not be met. There is no retroactive application of accessibility requirements under the BC Building Code and the establishment is therefore conforming.

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

Providing food and beverage service is consistent with the Official Community Plan objectives for this neighbourhood.

CONCLUSIONS

This application proposes to increase hours of licensed service for Cenote’s Food Primary licence at 768 Yates Street by one hour daily. Proposed hours are from 11 am to 1 am Sunday to Thursday, and 11 am to 2 am Friday and Saturday; current hours are from 11 am to 12 am Sunday to Thursday, and 11 am to 1 am Friday and Saturday. The current occupant load of 110 people will be maintained. The site is appropriately zoned for the use, is consistent with current City policy, and any impacts are expected to be minimal.

ALTERNATE MOTIONS

1. That Council, after conducting a review with respect to noise and community impacts regarding the application of Cenote, at 768 Yates Street, does not support the application.

Respectfully submitted,

Ryan Morhart, Manager
Permits & Inspections

Karen Hoese, Director
Sustainable Planning & Community Development

Report accepted and recommended by the City Manager: _____

Date: _____

List of Attachments

- Appendix A: Rationale Letter
- Appendix B: Site Map

Appendix C: Vicinity Map
Appendix D: Noise District Map
Appendix E: Council Policy
Appendix F: Police Comments
Appendix G: Public Response from 30 day posting
Appendix H: Response from DRA
Appendix I: Applicants Comments
Appendix I: Provincial Liquor License Types