



Committee of the Whole Report

For the Meeting of January 6, 2022

To: Committee of the Whole **Date:** November 10, 2021

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

Subject: **Application for Extended Hours for a Food Primary Licence for J R Slims at 1245 Wharf 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, supports the application of J R Slims at 1245 Wharf Street to obtain extended hours of licenced service for their food primary licence where hours are 9am to 1am daily with an occupant load of 178 people that includes a 38-person outdoor patio where the outdoor patio is closed by 12am daily.

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 recommended hours and occupant load at this location are compatible with the area. If approved as recommended, the establishment is not expected to result in unacceptable levels of noise.
- b. Approval of extended hours is not expected to contribute to the likelihood that the service area will be operated in a manner that is contrary to the primary purpose.
- c. 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.
- d. The views of residents were solicited through a mailout to neighbouring property owners and occupiers within 100 metres of the licenced location and a notice posted at the property. In response to the notification that went to 524 owners and occupants, the City received five letters in response to the notification which included a letter from the Downtown Residents Association; all expressed concern for the application proposing extended hours.
- e. Council recommends to the Province that the food primary licence be approved as recommended.

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 J R Slims at 1245 Wharf Street. The application is for a food primary licence having extended hours to 2am daily with a total occupant load of 178 people which includes a 38-person outdoor patio.

J R Slims' 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 J R Slims at 1245 Wharf Street for extended hours be supported as recommended, with hours of licenced service to 1am daily and with the outdoor patio closing by 12am daily.

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 J R Slims to extend their hours of operation to 2am daily for a food primary licence having an existing occupant load of 178 people which includes a 38-person outdoor patio. Existing hours of service are from 9am to 12am daily. 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 (requested for food primary only).

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 12am 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 J R Slims, the operator is seeking hours that extend beyond midnight to 2am for their 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 (except New Year's Eve).

The application for extended hours to 2am daily for J R Slims at 1245 Wharf Street is within the parameters of the City's policy.

Zoning

Zoning for the establishment is OTD-1, Old Town District-1 Zone and the property is in Development Permit Area DPA 1 (HC). The zone permits *food and beverage services* and *drinking establishment* uses, leaving hours and occupant loads as unrestricted. The DPA aims to revitalize the area while conserving and enhancing its heritage value. Compliance would be demonstrated through the City inspection process related to an issued building permit

City Referrals

An inter-departmental review of the application is conducted prior to public notification. Review of the application for extended hours to 2am at 1245 Wharf 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

- The location is in an area where late operating hours are expected and residents nearby on the lower 500 block of Yates and in Waddington Alley have expressed concerns in the past about noise. Pandemic conditions have resulted in a prevalence of sidewalk patios and pedestrian congestion and related noise in the area. Later closing are hours are thought to increase the safety concerns in the area related to pedestrian congestion and nearby residents may be impacted.

Bylaw Services

- Bylaw did not provide comment regarding the application.

Police

- Police have expressed general concern for establishments seeking later hours as the trend could push liquor related issues further into the early morning hours. Police report that late night issues have returned with the end of COVID restrictions. Furthermore, Police note resource pressures and a lack of understanding with respect to City wide impacts associated with extended hours of licenced service. Police do not support the extension of hours as requested. 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 524 notices) were solicited by a mailed notice to provide input regarding this application. The notice was also sent to the Downtown Residents Association. The public notification letter and poster reflected the applicant's request to extend hours to 2am daily and also stated the occupant load. The comment period was open for 30 days.

In terms of community feedback, the City received five letters in response to the notification which included a letter from the Downtown Residents Association; all expressed concern for the application and its request to extend hours to 2am daily.

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 licence 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 of a food primary establishment.

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.

J R Slims is located in the Old Town 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 J R Slims potential to contribute to noise related issues, the application has been assessed against the existing licenced capacity in the vicinity, which includes the block of the establishment and adjacent blocks.

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.

The vicinity information, attached as Appendix C, illustrates the composition of licenced establishments in the area which includes a total of 3,656 licenced seats where:

- 982 (27%) are liquor primary seats distributed over six establishments
- 2,674 (73%) are food primary seats distributed over 21 establishments.

To provide perspective on the hours of operation of the 3,656 licenced seats in the area:

- 779 (21%) are closed by midnight
- 1,959 (54%) are closed by 1am
- 918 (25%) close at 2am.

In Victoria there are approximately 115,000 licenced seats of which:

- 53,400 (46%) close by midnight
- 42,500 (37%) close by 1am
- 19,000 (17%) close by 2am.

J R Slims has worked with LCRB Enforcement to maintain standards of compliance with LCRB licence requirements and LCRB reports no concerns or outstanding enforcement issues.

The application for extended hours did not result in proportionally high volumes of correspondence expressing concern with the application, and currently 79% of establishments in the area are open until 1am.

The above information provides basis for recommending that the patio is closed by 12am daily and that the interior area is licenced until 1am daily.

The applicant has included a letter of intent, attached as Appendix A, which outlines their business approach and the reason for requesting the extension of hours.

Consideration of the factors noted above 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. 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 food primary licensees that operate any area of the business as a bar or nightclub and circumvent the LCRB approval process are in serious contravention of the terms and conditions of their licence.

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 which is relatively new, current accessibility requirements are likely met in full for common areas serving the proposed restaurant. Furthermore, the establishment is a new development and will require a building permit and accessibility for the interior spaces of the proposed establishment will be reviewed in the course of approving the permit and requirements of the code for accessibility will be met.

Strategic Plan 2019 – 2022

The recommendation to support for 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 is for a food primary licence with extended hours to 2am daily for J R Slims at 1245 Wharf Street. The existing hours of licenced service are from 9am to 12am daily with a total occupant load of 178 people which includes a 38-person outdoor patio. The site is appropriately zoned for the use, is consistent with current City policy; however, both staff and the public have expressed concerns related to the potential for increased noise and other impacts in the area. For this reason, staff recommend that Council provides support for the extended hours to provide licenced service from 9am to 1am daily, with the existing occupant load of 178 people, including a 38-person patio where the outdoor patio area is closed by 12am daily.

ALTERNATE MOTION

That Council, after conducting a review with respect to noise and community impacts regarding the application of J R Slims at 1245 Wharf Street, does not support the application.

Respectfully submitted,

Ryan Morhart, Manager
Permits & Inspections Division

Karen Hoese, Director
Sustainable Planning and Community
Development Department

Report accepted and recommended by the City Manager.

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 the Downtown Residents Association
- Appendix I: Applicant's Comments
- Appendix J: Provincial Liquor Licence Types.