



Committee of the Whole Report

For the Meeting of January 6, 2022

To: Committee of the Whole **Date:** November 18, 2021

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

Subject: **Application for a Patron Participation Entertainment Endorsement and Extended Hours for a Food Primary Licence for Toptable Victoria at 1515 Douglas 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 Toptable Victoria at 1515 Douglas Street to obtain a patron participation entertainment endorsement for their food primary licence and have extended hours of licenced service to 1am daily with an occupant load of 177 people that includes the 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, the establishment is not expected to result in unacceptable levels of noise where activities permitted by the endorsement are required to end by midnight and patio hours are reduced to 12am daily.
- b. Approval of the endorsement 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 747 owners and occupants, the City received 13 letters in response to the notification which included a letter from the Downtown Residents Association; 11 expressed concern for the application and two expressed support regarding the application for a patron participation entertainment endorsement and 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 Toptable Victoria at 1515 Douglas Street. The application is for a food primary licence having a patron participation entertainment endorsement and extended hours to 2am daily with a total occupant load of 177 people which includes a 38-person outdoor patio. It is noted that, following the review process, Toptable has indicated that they are willing to reduce their proposed interior hours to 1am daily to address neighbourhood concerns.

Toptable Victoria'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 Toptable Victoria at 1515 Douglas Street for a patron participation entertainment endorsement and 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 Toptable Victoria for a food primary licence having a patron participation entertainment endorsement and extended hours of service from 9am to 2am daily at 1515 Douglas 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 (requested for food primary only).

A patron-participation entertainment endorsement means the establishment can allow entertainment that patrons may participate in, such as dine and dance or karaoke. Activities associated with this endorsement are required by LCRB to end by midnight regardless of the licenced hours of service. The occupant load for the establishment is 177 people which includes a 38-person outdoor patio. 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 Toptable Victoria, the operator is seeking a patron participation entertainment endorsement and 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 a patron participation entertainment endorsement having the hours proposed for Toptable Victoria at 1515 Douglas Street is within the parameters of the City's policy.

Zoning

Zoning for the establishment is CBD-1, Central Business District-1, which permits "Food and Beverage Service" and "Drinking Establishments" and imposes no restriction on hours or occupant loads. 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 Referrals

An inter-departmental review of the application is conducted prior to public notification. Review of the application for a patron participation entertainment endorsement and extended hours at 1515 Douglas 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 establishment's location is noted to be near residences on Cormorant Street and in an area where there is not a high concentration of licenced establishments. Toptable is in

a newer building and experience is that these tend to have better sound transmission qualities and early closure of the outdoor patio (11pm) should ensure noise related impacts are minimal and that the application is otherwise supportable.

Bylaw Services

- Bylaw did not provide comment regarding the application.

Police

- Police note that the hours proposed in combination with the activities permitted by the patron participation entertainment endorsement are consistent with a nightclub. Police recommend the restaurant is established prior to gaining approval for the endorsement and hours to ensure they are operating responsibly as good neighbours. 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 747 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 applicant's intent to obtain a patron participation entertainment endorsement and extended hours to 2am and also stated the occupant load. The comment period was open for 30 days.

In terms of community feedback, the City received thirteen letters in response to the notification which included a letter from the Downtown Residents Association: 11 expressed concern for the application and two expressed support regarding the application for a patron participation entertainment endorsement.

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 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.

Toptable Victoria 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 Toptable's 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. The application includes a patron participation entertainment endorsement which enables patrons to participate in activities such as dine and dance or karaoke and it is notable that the activities permitted by the endorsement are required by LCRB to end by midnight regardless of the licenced hours of service.

The vicinity information, attached as Appendix C, illustrates the composition of licenced establishments in the area which includes a total of 1,728 licenced seats where:

- 168 (10%) are liquor primary seats distributed over three establishments
- 1,560 (90%) are food primary seats distributed over 18 establishments.

To provide perspective on the hours of operation of the 1,728 licenced seats in the area detailed in Appendix C:

- 880 (51%) are closed by midnight
- 590 (34%) are closed by 1am
- 258 (15%) 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.

Toptable Victoria is owned by the Toptable Group which owns and operates several licenced establishments in BC. The company's website profiles a collection of quality restaurants attracting a demographic of patrons not typically associated with negative impacts. LCRB Enforcement reports that there is no history or instances of noncompliance to report with respect to the Toptable Group and the seven restaurants it owns and operates in BC.

In Victoria, a food primary establishment proposing a patron participation entertainment endorsement is not subject to Council review where the establishment closes by midnight. The application of Toptable proposes hours of 2am daily (reduced by the applicant to 1am daily in response to the public consultation process) which makes the application subject to Council review. Regardless of the outcome of that review, LCRB regulations require that the activities associated with the patron participation endorsement end by midnight. These factors illustrate a baseline for impacts as any food primary could obtain a licence having a patron participation entertainment endorsement with no limit on occupant loads so long as it was not open past midnight.

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 above information provides basis for recommending that the patio is closed by 12am daily, which also aligns with the daily conclusion of activities permitted by the patron participation entertainment endorsement. Impacts related to the interior space are not anticipated and early closing of the patio minimizes impacts resulting from the patio to acceptable levels.

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

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. The applicant's response letter indicates that they wish to voluntarily reduce interior hours to 1am daily in response to concerns expressed through the public notification process.

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 for Toptable Victoria at 1515 Douglas Street with a patron participation entertainment endorsement and extended hours from 9 am to 2am daily . The total occupant load is 177 people which includes a 38-person outdoor patio. The site is appropriately zoned for the use and is consistent with current City policy; however, concerns exist related to the potential of noise originating from the patio area to impact nearby residents. With consideration of concerns expressed and the direction provided by the applicant, staff recommend that Council provides support for the proposed patron participation entertainment endorsement and for extended hours to 1am daily, with patio hours not exceeding 12am daily.

ALTERNATE MOTION

That Council, after conducting a review with respect to noise and community impacts regarding the application of Toptable Victoria at 1515 Douglas 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: Applicants Comments
- Appendix J: Provincial Liquor License Types