



## **Committee of the Whole Report**

### **For the Meeting of February 3, 2022**

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**To:** Committee of the Whole **Date:** December 20, 2021

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

**Subject:** **Application for an Outdoor Patio at Phillips Brewing Company (Phillips), 2010 Government Street**

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### **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 Phillips Brewing Company located at 2010 Government Street for an outdoor patio service area connected with their existing manufacturer's lounge endorsement service area having hours from 11am to 11pm daily, where the existing occupant load (134 people) associated with the indoor service area would be redistributed to include the proposed patio service area.

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 patio, with no adjustment or increase to hours or occupant load, is 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 85 owners and occupants, the City did not receive any response to the notification from the public or from the Burnside Gorge Community 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 Phillips at 2010 Government Street. The application proposes the addition of an outdoor patio service area to their manufacturer's lounge endorsement indoor service area and the application does not propose an adjustment or increase to the hours or occupant load associated with the existing lounge endorsement. Hours of licensed service are 11am to 11pm daily and the occupant load of 134 people would be redistributed to include the outdoor patio service area.

Phillips' 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 Phillips at 2010 Government 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 Phillips Brewing Company (Phillips) for a sidewalk cafe license for an outdoor patio area for their existing Manufacturer's Lounge Endorsement licence at 2010 Government 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.

Phillips is proposing an outdoor patio with hours that are common to the existing interior licensed service area, 11am to 11pm daily and no increase to the existing occupant load of 134 people. The total occupant load of 134 people would be distributed between the existing interior service area and the proposed outdoor patio service area. 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.

Manufacturers are permitted to provide licenced service under a lounge endorsement associated with their manufacturers licence and Phillips, the operator, is seeking to increase their existing lounge endorsement service area to include outdoor patio service area.

## **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 2am will not be considered (with the exception of New Year's Eve).

The hours of licensed service proposed in this application for Phillips at 2010 Government Street are within the parameters of the City's policy.

## **Zoning**

The subject property is currently zoned M-G-3, Government Light Industrial 3 District, which permits liquor retail sales with a maximum floor area of 105m<sup>2</sup>, brewery, and brewpub uses, Hours and occupant loads are not governed by 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 patio service area associated with the existing manufacturer's lounge endorsement at 2010 Government Street resulted in the following feedback.

### Sustainable Planning & Community Development

- The application is supportable as the establishment is zoned appropriately for use as a *brewpub*.

### Engineering & Public Works

- The Pedestrian Master Plan and Local Area Plan has identified the portion of Discovery Street associated with the patio for future pedestrian and boulevard improvements. Future designs for this street will consider the retention of the sidewalk café.
- Permission to use the area as an outdoor patio is granted through a Sidewalk Café Licence and the approval process includes mechanisms that ensure future pedestrian and boulevard improvements are not hindered by a lack of administrative foresight to conclude permission to use the area.

### Community & Business Relations

- Community & Business Relations has no objections to the proposed patio area.

### Bylaw Services

- Bylaw did not provide comment regarding the application.

### Police

- Police do not oppose this application for an outdoor patio area. 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 85 notices) were solicited by a mailed notice to provide input regarding this application. The notice was also sent to the Burnside Gorge Community Association. The public notification letter and poster reflected the application's proposal including hours and occupant load. The comment period was open for a total of 30 days.

In terms of community feedback, the City did not receive any response to the notification from the public or from the Burnside Gorge Community Association.

## 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.

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.

Phillips is located in the M-G-3 Zone, Government Light Industrial 3 District, and is appropriately zoned for this use. Based on the City's Noise Bylaw, this site is within the Activity Noise District and is subject to the noise limits prescribed for this district.<sup>1</sup> The Noise District Map is included in Appendix D.

To understand Phillips' 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. The proposed patio redistributes the existing occupant load and does not propose an increase and hours of service are not proposed to change. With no increase or adjustment to either occupant load or hours, the vicinity assessment of the proposed patio is 0% change in terms of occupant load or hours as factors that contribute to noise related issues. The assessment does not distinguish between indoor and outdoor seating areas. Vicinity information is attached as Appendix C.

Phillips has an existing lounge endorsement associated with their manufacturer's licence with hours of operation from 11am to 11pm daily and an occupant load of 134 people and they have held the lounge endorsement since early in 2018. 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.

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<sup>1</sup> The Noise Bylaw sets limits for four key areas within the City: Quiet District, Intermediate District, Harbour Intermediate and Activity District. The Activity Noise District is limited to 70dBA at the point of reception until 10pm; after 10pm, 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. 70 dBA is in the middle of this decibel range. It is equivalent to the sound level of a regular washing machine. It is also equivalent to the noise level in an office environment or inside a car driving at 60 mph.

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. Phillips has not had any violations in the two-year reference period.

On the basis of analysis of hours, occupant load and experience with the operator, it is not expected that approval of the licence will result in unacceptable levels of noise or other impacts.

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.

## **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 not to provide additional correspondence.

## **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

The Official Community Plan Urban Place Designation for the subject property is *Core Employment*, which supports light industrial, commercial and complimentary retail uses, including food and beverage services. The inclusion of the brewery and ancillary uses has served to retain and strengthen the industrial heritage of the area while accommodating appropriate transitional uses.

## **CONCLUSIONS**

This application proposes an outdoor patio area with no increase or adjustment to the hours or occupant load associated with the manufacturer's lounge endorsement at 2010 Government Street. The proposed patio would have hours from 11am to 11pm daily, and the existing occupant load (134 people) associated with the indoor service area would be redistributed to include the proposed patio service area. The site is appropriately zoned for the use, is consistent with current City policy, and any impacts are expected to be minimal.

## **ALTERNATE MOTION**

That Council, after conducting a review with respect to noise and community impacts regarding the application of Phillips Brewing Company, at 2010 Government Street, does not support the application.

Respectfully submitted,

Ryan Morhart, Manager  
Permits & Inspections

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: Provincial Liquor License Types.