



Committee of the Whole Report

For the Meeting of June 20, 2019

To: Committee of the Whole **Date:** April 30, 2019

From: Andrea Hudson, Acting Director, Sustainable Planning and Community Development

Subject: Application to Change Hours of Licensed Service for Chuck's Burger Bar, Food Primary License at 101 - 538 Yates Street.

RECOMMENDATION

That Council direct staff to provide the following response to the Liquor Licensing Agency:

1. Council, after conducting a review with respect to noise and community impacts, does support the application of Chuck's Burger Bar located at 538 Yates Street to have hours of operation from 9:00 am to 12:00 am Sunday through Thursday and 9:00 am to 1:00 am Friday and Saturday with an occupant load of 100 persons.

Providing the following comments on the prescribed considerations:

- a. The impact of noise on the community near the establishment was considered in relation to the request and assumptions are the noise impacts would be comparable to previous licenced capacity and hours in the same location. The applicant's original request has been adjusted, reflecting community and staff inputs outlining concerns related to close proximity of residences and resource pressures.
- b. If the application is approved, the impact on the community is expected to be positive economically as the approval supports the business plan and long-term viability of the establishment.
- c. The views of residents were solicited via a mail out to neighbouring property owners and occupiers within 100 metres of the licensed location and a notice posted at the property. The City received four letters in response to the request, all of which were opposed. One of the four was from the Downtown Residents Association.
- d. Council recommends the hours supported for the establishment 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 Chuck's Burger Bar. The application is to increase existing hours of operation, being 9:00 am to 12:00 am daily, to 9:00 am to 1:00 am Sunday through Thursday, 9:00 am to 2:00 am Friday and Saturday with no change to the existing occupant load of 100 persons.

This location was previously occupied by Famous Originals and was approved to provide licenced service until 12:00 am Sunday through Thursday and 1:00 am Friday and Saturday. This licence was closed, and not transferred. Following this, Chuck's Burger Bar moved into this location consisting of interior space and an exterior patio area as represented by the floor plan provided in Appendix A. Chuck's Burger Bar received a new Food Primary License which permits licensed service up to 12:00 am daily. A resolution is required to extend these hours past midnight.

The application was reviewed by City staff including Planning, Engineering, Business and Community Relations, Bylaw, and Police. A public notification process was also conducted, as required by the Liquor Licence Policy, to invite public comments through written correspondence. Four letters were received, all of which were opposed to the proposed hours and included a letter of opposition from the Downtown Residents Association.

The application is consistent with the City's Liquor License Policy. However, Yates Street is known to have a significant density of licenced seats, and concerns regarding this have been expressed by both staff and the community. Extended hours at the same location was most recently considered in 2016, and the conclusion at that time was that 12:00 am closing on Sunday through Thursday and a 1:00 am closing on Friday and Saturday would be appropriate.

After reviewing staff comments and community feedback, the applicant has proposed additional options that include a 2:00 am closing on Friday and Saturday while maintaining the 12:00 am closure for the remaining days of the week, or as an alternative to this, a 1:00 am closing every day.

Based on staff analysis and community feedback, an extension of hours to 1:00 am on Friday and Saturday only are recommended. The applicants request exceeds the recommendation, and would impose significant impact to residents in an already densified area.

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 Chuck's Burger Bar to increase hours of operation for their food primary license.

BACKGROUND

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 for the business based on submitted details. In the case of Chuck's Burger Bar, the establishment is regulated under a food primary licence.

This application is to extend hours of licensed service, and a letter of intent has been provided in conjunction with the application, included in Appendix A.

The existing hours are 9:00 am to 12:00 am daily with an occupant load of 100 persons distributed as follows; 13 seats to the outdoor patio area and 87 to the interior area. The application seeks a change to the hours, but not the occupant load, proposing 9:00 am to 1:00 am Sunday through Thursday, and 9:00 am to 2:00 am Friday and Saturday. The LCRB is requesting a resolution from the City of Victoria regarding:

1. The impact of noise on nearby residents.
2. Impact on the community if the application is approved.
3. Whether or not the amendment, if approved, would result in the service area being operated in a manner that is contrary to the primary purpose.

A map of the subject property and the immediate area is attached to this report (Appendix B) and illustrates the 100m public notification area targeted for comment.

The location was previously home to Famous Originals which was also a food primary establishment, but they did not transfer their licence, and so the new food primary establishment has no right to hours previously approved, and must again seek a Council resolution of support.

ISSUES & ANALYSIS

The following sections identify key issues and provide analysis for Council's consideration:

Zoning

Zoning for the establishment is OTD-1, which permits "drinking establishment," and "restaurant" uses and imposes no restriction on hours or occupant loads. Compliance would be demonstrated through application for a building permit and the resulting construction verified for compliance through the City inspection process related to an issued building permit.

Noise Bylaw

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. Chuck's Burger Bar is within the Intermediate Noise District and limited to 60dBA 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 50dBA in Quiet districts, 55dBA in the 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. 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 C).

Vicinity and Municipal Impacts

Predictability of noise related issues or other community impacts, negative or positive in effect, is challenging due to a number of variable factors. 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 factor into predicting the likelihood of noise related issues and impacts on the community.

Consideration of those factors can assist a municipality to predict negative aspects associated with licenced establishments. The factors considered in conjunction with any application approval at time of consideration change over the life of a licenced establishment, and 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. These tools include LCRB enforcement, which ensure responsible and appropriate service as required by the terms of the licence with LCRB. The Noise Bylaw can be enforced to bring an establishment into compliance, and police have additional authority to bring an establishment back into compliance where issues are more complex.

Chuck's Burger Bar's application has been considered with regard to the impact it would have on the community and its potential to generate noise related issues. The establishment is regulated under a food primary licence and has been compared in terms of existing capacity in the vicinity and citywide, for comparison and understanding of likely impact.

Based on the occupant load associated with the licence, an increase to hours beyond midnight on the 500 Block of Yates Street represents up to a 40% increase in seating capacity for food primaries at 1:00 am or up to 81% increase if permitted to stay open until 2:00 am. The staff recommendation to extend hours to 1:00 am on Friday and Saturday only, imposes a 20% increase, but the area has experience with these hours due to the previous operator which operated under the hours put forth in the recommendation. The applicant's proposal would impose potential impacts and the recommendation is based on established norms for the area and minimizes impacts to the community beyond that which exists currently. Vicinity information is attached as Appendix D.

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

City Referrals

An inter-departmental review of the project was undertaken and included circulation to Planning, Engineering, Community and Business Relations, Bylaw, and Police. That review resulted in the following feedback,

Planning

- The application is supportable as the establishment is zoned appropriately for its intended use.

Engineering

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

Community and Business Relations

- Community and Business Relations identified issues associated with existing licenced capacity and density in the area. Recent complaints made by residents give cause to believe issues will be increase if capacity at later hours is increased. Community and Business Relations recommends weekend hours of 1:00 am and not later than existing 12:00 am on weekdays with patio hours set to 10:00 pm and 11:00 pm correspondingly.

Bylaw

- Bylaw identified similar concerns as Community and Business Relations, noted above.

Police

- Police do not support the application due to resource pressures. 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 were solicited by a mailed notice to provide input regarding this application. In addition, Chuck's Burger Bar posted a notice poster at the entrance for 30 days, which invited input to the City with respect to this application.

Notices were mailed to 703 addresses. Of the 703 addresses notified, four letters were received which included a letter from the DRA; all were in opposition to the application. These response letters are available in Appendix G.

Applicant Response

As is standard practice as a part of the liquor licence process, after City staff gives input, the applicant has a chance to review the information (and this report) and respond prior to the report being forwarded to Council. After the applicant reviewed City staff comments, the applicant chose to provide additional correspondence related to the staff review and the report. This correspondence is available in Appendix H.

The applicant was informed of staff and community concerns, and in response has proposed other options that include a 1:00 am daily closing, or maintaining the 12:00 am closing Sunday through Thursday with extended hours to 2:00 am on Friday and Saturday. These improve on the original request but still carry impacts in terms of increased capacity that may be experienced by residents in the area.

IMPACTS

Accessibility Impact Statement

As this application is focused on extending hours of operation and no changes are proposed to the interior space or outdoor patio, this application does not result in accessibility impacts.

Strategic Plan 2019 – 2022

The recommendation to support the application is likely to increase the viability of the pub as a local employer, which is consistent with Strategic Objective #4 – *Prosperity and Economic Inclusion*.

Impacts to Financial Plan

None

Official Community Plan

The proposed license changes are consistent with the *Official Community Plan* objectives for this neighbourhood as the property is located within the Core Historic designation which permits a mix of uses including commercial, retail, office and multi-unit residential.

CONCLUSIONS

The application to extend hours is supportable where hours of operation are from 9:00 am to 1:00 am Friday through Saturday, and 9:00 am to 12:00 am Sunday through Thursday. Concern for the application was expressed by the community and staff, and consequential analysis of the local vicinity and the 500 Block of Yates street has informed a recommendation that is in keeping with existing conditions in the area. The applicant appreciates concerns expressed and proposed additional alternatives that were found to impose impacts similar to the initial application, and were therefore not supportable. The recommendation permits additional hours, and does not impose significant additional stress to the already densified area.

ALTERNATE MOTIONS

1. Council could support the hours originally proposed for Chuck's Burger Bar at 538 Yates Street, 9:00 am to 1:00 am Sunday through Thursday and 9:00 am to 2:00 am Friday and Saturday.

2. That Council, after conducting a review with respect to noise and community impacts regarding the application of Chuck's Burger Bar, at 538 Yates Street, does not support the request for the amendment.

Respectfully submitted,



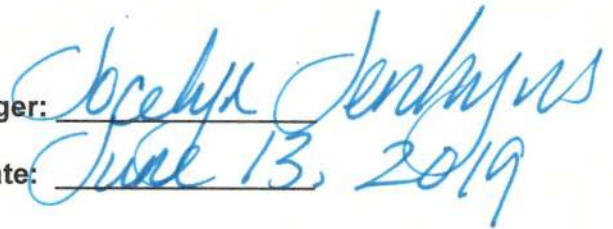
Ryan Morhart
Manager, Permits & Inspections



Andrea Hudson, Acting Director
Sustainable Planning & Community Dev.

Report accepted and recommended by the City Manager:

Date:


June 13, 2019

List of Attachments

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