



Committee of the Whole Report

For the Meeting of November 10, 2022

To: Committee of the Whole **Date:** July 13, 2022

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

Subject: **Application for a New Liquor Primary Licence for Friends of Dorothy Cocktail Lounge at 537 Johnson 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 Friends of Dorothy, located at 537 Johnson Street, for a new liquor primary licence having hours of operation from 9am to 12am daily, with enclosed patio hours of 9am to 10pm Sunday to Thursday and 9am to 11pm Friday and Saturday, having a total occupant load of 105 people including a 22-person enclosed patio.

The following comments are provided regarding the prescribed considerations:

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 the establishment's location are intended to help mitigate impacts identified through the public notification process.

- a. 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.
- b. 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 565 owners and occupiers, the City received ten letters in response to the notification: nine respondents expressed concern and one expressed support. A letter from the Downtown Residents Association (DRA) indicated that they had not received wider public input and recommended the provision of more information to assist in better understanding applications.
- c. Council recommends to the Province that the liquor 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 Friends of Dorothy Cocktail Lounge (FOD), located at 537 Johnson Street. The application is for a new Liquor Primary licence having hours of operation from 9am to 12am daily with a total occupant load of 105 people including a 22-person enclosed patio.

The establishment currently holds a Food Primary licence with hours of licenced service and an occupant load that are the same as requested for the Liquor Primary application. The approval of the Liquor Primary licence would align with FODs business model and it is their intent to obtain a family foodservice endorsement with their liquor primary licence that would allow minors up to 10pm daily although the operator has indicated that they would limit minors to not later than 9pm.

FOD'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 the City as a whole and is consistent with the City's *Liquor Licensing Policy*. Concerns were expressed by nearby residents and property owners regarding noise associated with the establishment and the enclosed patio. On this basis, it is recommended that the application of FOD at 537 Johnson Street be supported where hours of operation are from 9am to 12am daily, but that the enclosed patio hours be reduced to 10pm Sunday to Thursday and 11pm Friday and Saturday.

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 Friends of Dorothy Cocktail Lounge (FOD) at 537 Johnson Street. The Liquor and Cannabis Regulations Branch (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.

FOD is seeking approval for a new liquor primary licence having hours of licensed service from 9am to 12am daily with a total occupant load of 105 people which includes a 22-person enclosed patio. The liquor primary licence is sought by the applicant who also intends to obtain a family foodservice endorsement for their licence which allows minors up until 10pm daily although the establishment intends to stop service to minors earlier at 9pm. A letter of intent has been provided in Appendix A and includes information about the business model and the rationale for the licence application. A map of the subject property and the immediate area is provided in 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 LCRB issues liquor licences under the authority of the *Liquor Control and Licensing Act* and regulations, and determines the category of licence appropriate or acceptable for the business based on submitted details.

The LCRB issues liquor primary licences to businesses where the primary purpose of the business is not the service of food and where liquor is being served in the service area. All liquor primary licence applications are referred to local government by LCRB. In the case of FOD, the operator is seeking a liquor primary licence with a family foodservice endorsement to accommodate an inclusive business model. LCRB's standard for family foodservice terms and conditions ensure the environment is appropriate for minors, and that minors are not permitted past 10pm daily and must be accompanied by a parent or guardian.

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 (except New Year's Eve).

The hours of licensed service proposed in this application for FOD at 537 Johnson Street are 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), which aims to revitalize the area while conserving and enhancing its heritage value. The zone permits *food and beverage services* and *drinking establishment* uses, and compliance would be demonstrated through the building permit process and verified through the City inspection. Closing times and occupant loads are not land use matters and therefore are not addressed in the zone.

City Referrals

An inter-departmental review of the application is conducted prior to public notification. Review of the application for a liquor primary licence at 537 Johnson 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 as a *drinking establishment*.

Engineering & Public Works

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

Community & Business Relations

- The establishment is in an entertainment district and is also in close proximity to residences.
- Based on proximity conditions it is recommended that the patio is not open later than 11pm daily.

Bylaw Services

- Bylaw has noted that several complaints were received regarding the establishment's patio between March and July of 2021. The complaints were resolved without direct intervention of Bylaw Services, but concern exists that complaints will result from a potentially more impactful liquor primary licence.

Police

- Police have expressed that they have no objections to the application. 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 565 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 liquor primary licence with hours of licenced service from 9am to 12am daily with an occupant load of 105 people. The comment period was open for 30 days.

The City received eleven letters in response to the notification which included a letter from the Downtown Residents Association (DRA); nine respondents expressed concern, primarily regarding noise impacts, and one expressed support. The DRA indicated that they had not received wider public input and noted that the provision of more information would assist in understanding applications.

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.

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.

FOD 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.

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.

To understand FOD'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 vicinity information, attached as Appendix C, illustrates the composition of licenced establishments in the area which includes a total of 2,705 licenced seats where:

- 1,149 (42%) are liquor primary seats distributed over five establishments
- 1,556 (58%) are food primary seats distributed over 16 establishments.

To provide perspective on the hours of operation of the 2,705 licenced seats in the area:

- 891 (33%) are closed by midnight
- 1,959 (26%) are closed by 1am
- 1,112 (41%) 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.

FOD, which previously operated as Willie's Bakery, has operated under new ownership since December 2020. LCRB enforcement has had some issues that include noise complaints, providing entertainment without the required patron participation entertainment endorsement, and operating contrary to the purpose of their food primary licence. LCRB reports that these issues have been responded to with attention which includes operational changes and an application for a liquor primary licence to provide appropriate licencing for their business model.

Feedback received through the public notification process, raised concerns about noise impacts resulting from the operation of the establishment and the 22-seat enclosed patio, specifically amplified music and other audio associated with entertainment provided by FOD. The applicant has indicated awareness of the issues and has identified measures to reduce noise impacts on nearby residences. With respect to the existing enclosed patio area this includes reducing music volume at 11pm, ensuring doors remain closed, and removing outdoor speakers. The operator has also hired additional security on busier nights to ensure patrons do not linger. As the enclosed patio does not possess the qualities necessary to attenuate noise from patron activities and amplified sound, it is recommended that the patio area hours be reduced to no later than 10pm Sunday through Thursday and 11pm Friday and Saturday, and that LCRB includes this in the terms and conditions of the licence.

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 provided correspondence to address concerns and support their application. This correspondence is available in 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 as recommended 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 use as a *drinking establishment* is consistent with the Official Community Plan objectives for this neighbourhood.

CONCLUSIONS

Friends of Dorothy is seeking approval for a new liquor primary licence having hours of licensed service from 9am to 12am daily with a total occupant load of 105 people which includes a 22-person enclosed patio. The site is appropriately zoned for the use and is consistent with current *City Liquor Licensing Policy*; however, to mitigate potential impacts associated with the 22-person patio area, earlier closing hours are recommended for the patio that are from 9am to 10pm Sunday to Thursday and 9am to 11pm Friday and Saturday. With hours reduced for the patio the application for the liquor primary licence is considered supportable.

ALTERNATE MOTION

That Council, after conducting a review with respect to noise and community impacts regarding the application of Friends of Dorothy at 537 Johnson Street, does not support the application.

Respectfully submitted,

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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