

REPORT TO COUNCIL



Date: October 9, 2018

RIM No. 0930-50

To: City Manager

From: Community Planning Department (LK)

Application: LL18-0011

Owner: Paramount Court Inc., Inc. No.
Aoo86803

Address: 257 Bernard Avenue

Applicant: Craft (Kelowna) Ltd – PJ
L'Heureux

Subject: Liquor License Application

Existing OCP Designation: MXR – Mixed Use (Residential/Commercial)

Existing Zone: C7 – Central Business Commercial

1.0 Recommendation

THAT Council directs Staff to forward the following Recommendation to the Provincial Liquor Control and Licensing Branch (LCLB):

In accordance with Section 71 of the Liquor Control and Licensing Regulation and Council Policy 359, BE IT RESOLVED THAT:

1. Council does not recommend support of an application from Craft Beer Market (Kelowna) Ltd for Parcel Z (Plan B5763) Block 13 District Lot 139 ODYD Plan 462 located at 257 Bernard Avenue, Kelowna, BC, for a Food Primary license with a capacity of 465 persons and hours of sales for License Number 792247124 from:
 - 9:00 AM to 1:00 AM for the interior (Seven days per week) and
 - 9:00 AM to 12:00 AM for the rooftop patio (Seven days per week);
2. That Council's comments on the prescribed considerations are as follows:
 - (a) The impact of noise on the community in the immediate vicinity of the establishment if the application is approved;

The potential impact for noise from the rooftop patio may be disruptive and would not be compatible with surrounding land uses.
 - (b) The impact on the community if the application is approved:

The potential for negative impacts on the community is increased due to the size and capacity of the food primary's rooftop patio.

- (c) If the amendment may result in the establishment being operated in a manner that is contrary to its primary Purpose:

The permanent extension of hours to 1 am are consistent with other food primary establishments within the downtown urban centre, but the scale of the business raises concerns due to the rooftop patio.

3. Council's comments on the views of residents are as contained within the minutes of the meeting at which the application was considered by Council. The methods used to gather views of residents were as per Council Policy #359 "Liquor Licensing Policy and Procedures."

2.0 Purpose

To seek Council's support to allow a permanent change in hours of operation to 1am inside for an existing Food Primary License.

3.0 Community Planning

Community Planning Staff does not support the requested permanent change to the licensed hours of operation for the existing food primary business (Craft Beer Market – total 465 seating capacity).

Adding future residential units to the Downtown and specifically in the Bernard Avenue area is a key objective for the City in its on-going revitalization efforts, and the operations of a late night Food Primary establishment with a large outdoor rooftop patio (238 outdoor seating capacity) may be disruptive to achieving this. The late night operations have potential to generate significant noise and dispersal issues at closing time that could conflict with nearby residential and have an increased negative impact to the surrounding community.

Staff and the RCMP are also concerned about the establishment's security measures and do not feel they are adequate to address the size, scale and late night operations (see Section 4.4 Alternate Solution).

Discussion of the LCLB's regulatory criteria for Local Government comment on liquor license endorsement applications is as contained within Staff's recommendation at the beginning of this report.

4.0 Proposal

4.1 Background

An application has been forwarded by the licensee to the Provincial Liquor Control and Licensing Branch (LCLB) for their approval. Procedurally, a Food Primary license requesting liquor service past midnight needs Local Government comment prior to LCLB making a final decision.

Currently, LCLB does not require local government to provide input for food primary licenses with hours of operation until midnight. This has allowed Craft to maintain hours of operation to midnight for both the restaurant and the roof top patio.

4.2 Project Description

Craft Brewery opened at the end of June of this year in the former Paramount Theatre location on Bernard Avenue directly across from Kerry Park. The applicant is requesting hours of operation beyond midnight to 1 am seven days per week. The rooftop patio hours of operation would be until midnight seven days per week.

Proposed Hours of Sale for Craft Beer Market:

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Open	9:00 AM	9:00 AM	9:00 AM	9:00 AM	9:00 AM	9:00 AM	9:00 AM
Close	1:00 AM	1:00 AM	1:00 AM	1:00 AM	1:00 AM	1:00 AM	1:00 AM

Craft Beer Market Restaurant and Bar:

Licensed Area	Net Floor Area	Proposed Capacity
Restaurant	272 m ²	227 persons
Rooftop Patio	285 m ²	238 persons
Total Capacity	557 m²	465 persons*

*The proposed capacity is based on preliminary floor plans, which are subject to approval by the Building & Permitting Branch and the LCLB.

4.3 Mixed Use Development Conflict

The downtown area is seeing a record amount of redevelopment which now includes an increased number of residential units along with the commercial components. As the residential density continues to increase, Staff needs to be cognizant of taking precautions to limit conflict between uses and minimizing noise impacts. While the area surrounding Craft has limited residential development currently, the long term vision includes increased density for the Urban Centre.

Earl's restaurant is located to the west of Craft and has been in operation since the mid 1980's. Their rooftop patio has a capacity of 60 people and has operations of hours until 1:30 am Monday thru Saturday. Directly south of the Earl's rooftop patio is an 18-unit condo building which was constructed in the early 1980's. Over the years, there have been numerous noise complaints from the strata in regards to the rooftop patio.

4.4 Alternate Solution

Staff and RCMP reviewed the applicants' request and were unable to support the extension of hours as proposed in the above table. An alternate solution was presented to the applicant in consideration of other establishments and the City's Good Neighbour Bylaw No.11500 and was subsequently rejected by them. The alternate solution would allow the establishment to operate as follows:

- Restaurant interior - operation until 1 am daily;
- Rooftop patio - liquor service to end by 11:00 pm and patrons to exit and patio to close by midnight;
- The applicant shall ensure that all music to the outdoor area is off no later than 10:00 pm;
- The installation of a patron ID system, Servall Biometrics which must operate from 9 pm to closing;
- Designated staff must complete a minimum BST level of training and possess a valid license while employed in the capacity of Security Staff

The above requested conditions are now standard practices for all major late night establishments operating in the downtown core and are intended to maintain the highest level of safety for the public and employees. The additional requirements around the rooftop patio are intended to generally align with the Bernard Avenue Sidewalk Program which encourages the use of sidewalk area for patios but strives to limit negative acoustic impacts to surrounding businesses and residents.

Entertainment venues in downtown Kelowna have been evolving in the last few years. With the closing of Flashbacks, there are only a few 'nightclubs' remaining in the downtown area. People are looking for more variety in their entertainment choices. Currently, the largest downtown venues include the Casino and BNA (which expanded into the former Flashbacks areas to now include bowling and bocce). Smaller establishments include the various microbreweries, pubs and lounges (with some offering board games or cards for patrons' use). These options are providing broader entertainment choices for people of all ages.

Craft is the latest establishment to offer games as an additional draw. The rooftop patio provides a games area which includes: beanbag toss and giant shuffleboard. Of note, Craft is the largest Food Primary establishment with a total capacity of 465 people. BNA is a Liquor Primary with a total capacity of 415 people. The establishments have a very similar business models and with BNA's expansion, they agreed to include additional safety measures which included the use of Servall.

Craft wishes to operate as a Food Primary, but is requesting the hours typically associated with a Liquor Primary. The business is also choosing not to incorporate the added security measures which have typically been requested of Liquor Primary establishments. Due to the scale and nature of the business, Staff and RCMP believe it should follow the requirements typically required of Liquor Primary establishments.

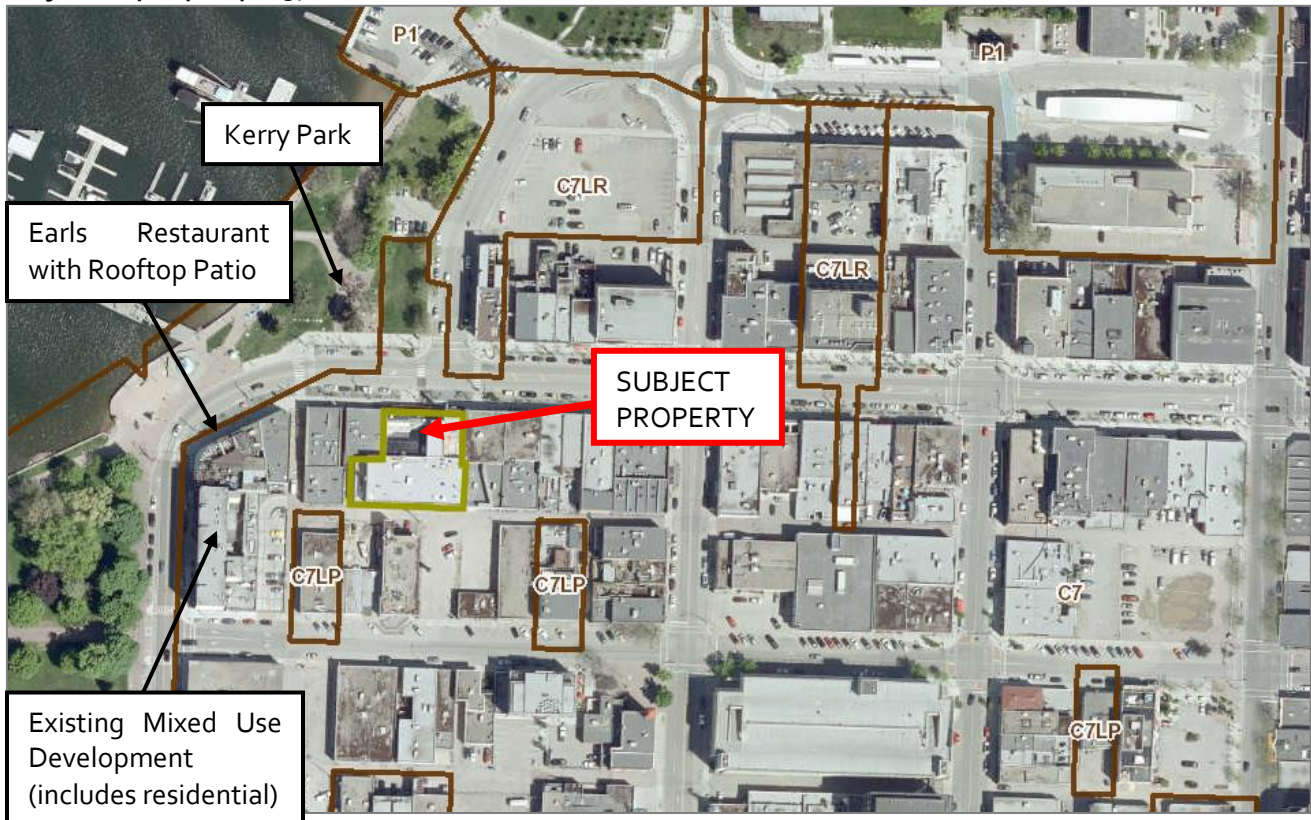
4.5 Site Context

The subject property is centrally located on the south side of Bernard Avenue at the Mill Street intersection. Kerry Park is directly across the street from the subject property.

Specifically, adjacent land uses are as follows:

Orientation	Zoning	Land Use
North	P3 – Parks and Open Space C7 – Central Business Commercial	Kerry Park Commercial Businesses
East	C7 – Central Business Commercial	Commercial Businesses
South	C7 – Central Business Commercial	Commercial Businesses
West	C7 – Central Business Commercial	Commercial Businesses, Mixed Use Development

Subject Property Map: 257 Bernard Avenue



5.0 Current Development Policies

5.1 Council Policy #359 – Liquor Licensing Policy & Procedures

The following sections of Policy #359 are applicable to this application:

Other Policies:

- a) New Patios associated with liquor establishments should be located and designed to limit potential impacts on surrounding owners.
- b) Where appropriate, support alternative entertainment options, and/or establishments which are less focused on alcohol consumption (including event-driven establishments, and Food Primary establishments with the Patron Participation Entertainment Endorsement) to add a mix of entertainment options in Urban Centres. Consider limiting potential community impacts via license terms and conditions (hours, capacity, etc)

5.2 Kelowna Official Community Plan (OCP)

Entertainment Venues.¹ Within designated Urban Centres, encourage private-sector provision of facilities which diversify the selection of venues and entertainment opportunities throughout the city.

¹ Policy 5.17.1 (Development Process Chapter 5, page 5.21)

6.0 Application Chronology

Date of Application Received: April 30, 2018

7.0 Alternate Recommendation

THAT Council directs Staff to forward the following Recommendation to the Provincial Liquor Control and Licensing Branch (LCLB):

In accordance with Section 71 of the Liquor Control and Licensing Regulation and Council Policy 359, BE IT RESOLVED THAT:

1. Council recommends support of an application from Craft Beer Market (Kelowna) Ltd for Parcel Z (Plan B5763) Block 13 District Lot 139 ODYD Plan 462 located at 257 Bernard Avenue, Kelowna, BC, for a Food Primary license with a capacity of 227 persons and hours of sales for License Number 792247124 from:
 - 9:00 AM to 1:00 AM for the interior (Seven days per week) and
 - 9:00 AM to 11:00 PM for the rooftop patio with a capacity of 238 persons (Seven days per week);
2. Council's comments on LCLB's prescribed considerations are as follows
 - (a) The impact of noise on the community in the immediate vicinity of the establishment if the application is approved;

The potential impact for noise has been mitigated with restricted hours of operation for the rooftop patio and would be more compatible with surrounding land uses.
 - (b) The impact on the community if the application is approved:

The potential for negative impacts on the community is considered minimal.
 - (c) If the amendment may result in the establishment being operated in a manner that is contrary to its primary Purpose:

The permanent extension of hours to 1 am are consistent with other food primary establishments within the downtown urban centre.
3. Council's comments on the views of residents are as contained within the minutes of the meeting at which the application was considered by Council. The methods used to gather views of residents were as per Council Policy #359 "Liquor Licensing Policy and Procedures."

Report prepared by: Lydia Korolchuk, Planner

Reviewed by: Terry Barton, Urban Planning Manager

Approved for Inclusion: Ryan Smith, Community Planning Department Manager

Attachments:

Attachment A: Occupant Load Drawing

Attachment B: Applicants Media Kit