

REPORT TO COUNCIL



Date: December 4, 2018

RIM No. 0930-50

To: City Manager

From: Community Planning Department (LK)

Application: LL18-0021 **Owner:** 432092 BC LTD., Inc. No. 432092

Address: 262 Bernard Avenue **Applicant:** Jeff Blower

Subject: Liquor License Application

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

Existing Zone: C7LP/RLS – Central Business Commercial (Liquor Primary/Retail Liquor Sales)

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 recommends support of an application from 432092 B.C. LTD., Inc. No. 432092 located at 262 Bernard Avenue, Kelowna, BC, legally described as Lot 1 District Lot 139 ODYD Plan 4153 and The West ½ of Lot 5 District Lot 139 ODYD Plan 505, for a permanent change to a food primary licensed hours of sales for License Number 162431 (Kelly O'Bryan's Pub) from existing hours of 10 AM – 12 AM (Seven days per week) to:
 - 9:00 AM to 1:00 AM for the interior space with a capacity of 92 persons (Seven days per week) and,
 - 9:00 AM to 12:00 PM for the rooftop patio with a capacity of 138 persons (Seven days per week);
2. That Council's comments on the prescribed considerations are as follows:
 - (a) The potential for noise if the application is approved;

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

The potential for negative impacts is considered to be 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.

THAT 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 for a permanent change in hours of operation to 1 am inside for an existing Food Primary Liquor License.

3.0 Community Planning

Community Planning Staff supports the request for a permanent change of the licensed hours of operation for the existing food primary business (Kelly O'Bryans's – total existing seating capacity of 230). Opening earlier in the day will have the potential to activate the space during the day when the facility would otherwise be closed and vacant. Opening earlier in the day does not create the same enforcement and policing issues that occur with later closings.

The proposed licensed hours of operation to remain open until 1:00 AM for the interior main floor space is not perceived to have a negative effect on the surrounding area given the location within the downtown core. The rooftop patio would have an earlier closing time to adhere to the Bernard Avenue Sidewalk Program. This includes the following:

- Rooftop patio - 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;
- Patio area already has weather panels installed, when utilized they will limit noise dispersion and impact to adjacent uses.

The above requested conditions for the outdoor patio are intended to limit the negative acoustic impacts to surrounding businesses and residents and to maintain the highest level of safety for the public as well as employees.

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 Kelly O'Bryan's to maintain hours of operation to midnight for both the restaurant and the roof top patio.

4.2 Project Description

Kelly O'Bryan's has been in operation at this location for over 20 years. The business is located on Bernard Avenue directly across from Kerry Park. The applicant is requesting hours of operation beyond midnight to 1am 7 days per week and the rooftop patio hours of operation would be until 7 seven days per week. The seating capacity will remain unchanged at 230 persons.

Existing Hours of Sale for Kelly O'Bryan's (Food Primary):

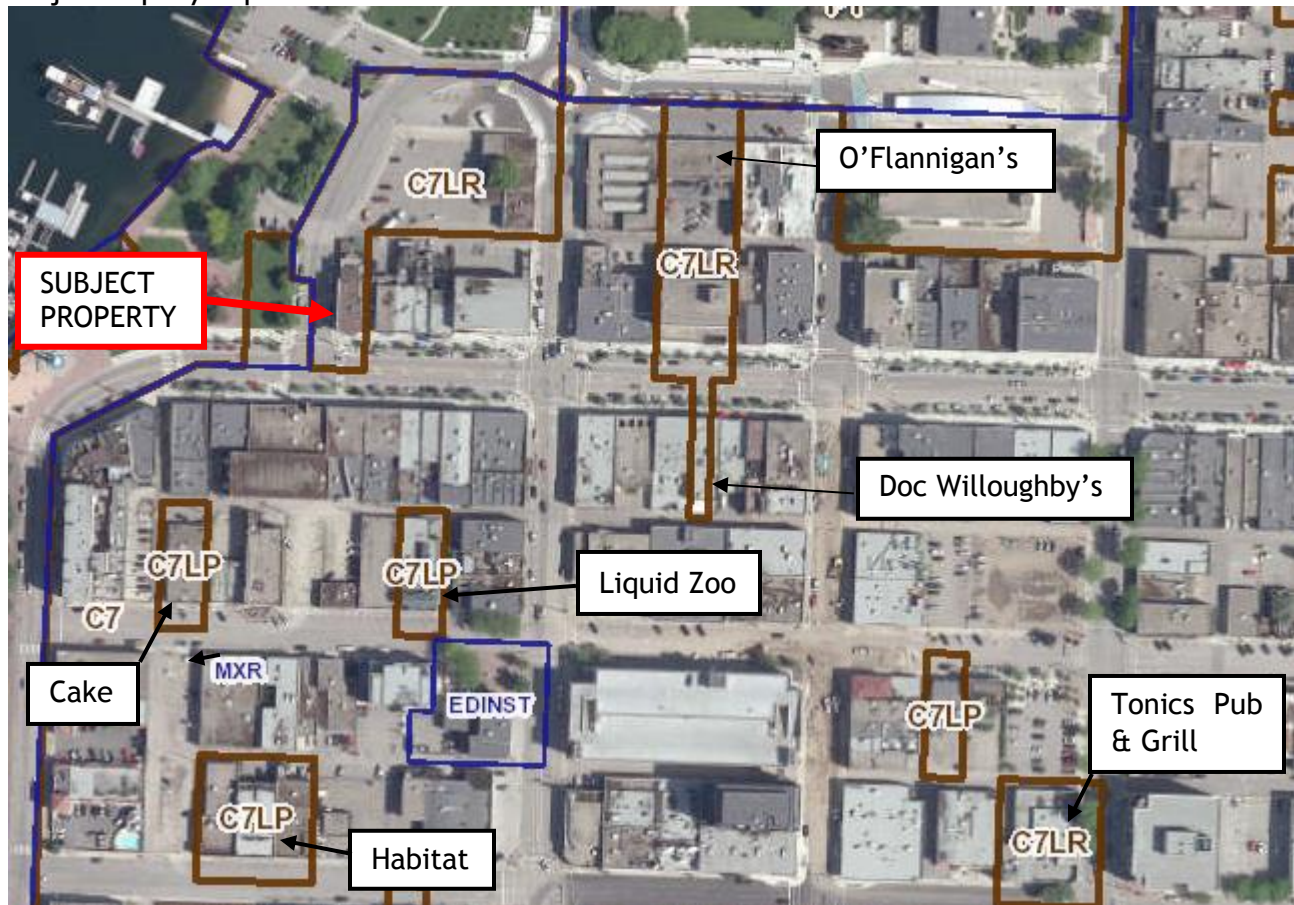
	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Open	10:00 AM	10:00 AM	10:00 AM	10:00 AM	10:00 AM	10:00 AM	10:00 AM
Close	12:00 AM	12:00 AM	12:00 AM	12:00 AM	12:00 AM	12:00 AM	12:00 AM

Proposed Hours of Sale for Kelly O'Bryan's (Food Primary):

	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

4.3 Site Context

Subject Property Map: 262 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.

6.0 Application Chronology

Date of Application Received: July 28, 2018

Report prepared by: Lydia Korolchuk, Planner

Reviewed by: Terry Barton, Urban Planning Manager

Approved for Inclusion: Ryan Smith, Community Planning Department Manager

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