

REPORT TO COUNCIL

LIQUOR LICENCE



Date: September 12, 2023
To: Council
From: City Manager
Address: 257-261 Bernard Ave
File No.: LL23-0015

	Existing	Proposed
OCP Future Land Use:	UC - Urban Centre	UC - Urban Centre
Zone:	UC1 – Downtown Urban Centre	UC1 – Downtown Urban Centre

1.0 Recommendation

THAT Council directs Staff to forward the following Recommendation to the Provincial Liquor and Cannabis Regulation Branch (LCRB):

In accordance with 'Division 9 (71)' of the Liquor Control and Licensing Regulation and Council Policy 359, BE IT RESOLVED THAT:

- 1) Council NOT recommend support of an application from Blue Diamond Hospitality Inc. for a Liquor Primary License, located at Parcel Z (Plan B5763) Block 13 District Lot 139 ODYD Plan 462, Kelowna, BC for the following reasons:
 - The application is contrary to Council Policy #359: Liquor Licensing Policy & Procedures for Liquor Primary (LP) Establishments;
 - The application is contrary to the 2040 Official Community Plan which indicates significant residential growth in the area;
 - The increase of noise and activity associated with a large rooftop Liquor Primary License may adversely affect current and future area residents;
- 2) Council's comments on LCLB's prescribed considerations are as follows:
 - a. The location of the establishment:
The location is within the Downtown Urban Centre on Bernard Avenue which is intended for businesses with an entertainment focus.
 - b. The proximity of the establishment to other social or recreational facilities and public buildings:
The location is in close proximity to several food primary establishments, liquor primary establishments and government buildings.
 - c. The person capacity and hours of liquor service of the establishment:
The proposal does not seek changes to the current person capacity of 505 persons. The hours of the outdoor patio may affect nearby residents.
 - d. The number and market focus or clientele of liquor-primary license establishments within a reasonable distance of the proposed location:
The 200 block of Bernard Ave contains several liquor primary businesses ranging in scale, hours, and focus.

- e. The impact of noise on the community in the immediate vicinity of the establishment:
The potential impact for noise from the rooftop patio may be disruptive and would not be compatible with surrounding land uses.
 - f. The impact on the community if the application is approved:
The potential for negative impact on the community may increase due to the size, capacity, and hours of the establishment on the rooftop patio with the addition of Patron Participation Entertainment uses, which is contrary to Council Policy #359 which states that Patios associated with liquor establishments should be located and designed to limit potential impacts on surrounding property owners.
- 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 review a Staff recommendation to NOT support a change of liquor license from a Food Primary Establishment to a Liquor Primary Establishment.

3.0 Development Planning

City Staff are not supportive of the proposed change of licence from a Food Primary Licence to a Liquor Primary Licence. The purpose of the change of liquor licence is to allow Patron Participation Entertainment which would be permitted under a Liquor Primary licence. Patron Participation Entertainment would allow an unlimited number of events such as live entertainment, dancing, karaoke, games, and more. Whereas a Food Primary licence is limited to six events per calendar year. Additionally, a Liquor Primary licence would allow patrons to maneuver around freely as opposed to being limited to their own table.

The Official Community Plan (OCP) indicates significant residential growth within the downtown core. Over the past several years many residential units have been built or are under construction and being added to the downtown core. In particular, 650 units are currently under construction 100 m away at the Water Street by the Park development. As the residential density continues to increase, Staff are trying to balance increasing residential density, while having a vibrant and amenity rich downtown. While the area surrounding the business currently has limited residential development, the long-term vision includes increased residential density for the Urban Centre. The operations of a late-night Liquor Primary Establishment with a large outdoor rooftop patio (238 outdoor seating capacity) is likely to be disruptive to the livability of both current and future nearby residents.

Generally, staff consider the following standards for outdoor patios:

- Last call for alcoholic beverages is 10:30 pm.
- All alcoholic beverages must be removed from the Permit Area by 11:00 pm.
- The patio must be cleared of people and closed by midnight.

The above requested conditions are now standard requirements for all liquor licenced establishments operating not only downtown, but across the City. 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 impacts to surrounding businesses and residents. Under the existing Food Primary licence, the existing rooftop patio is open until midnight.

The subject property is in close proximity to several Medium (100 – 249 persons) and Large (250+ persons) establishments as defined by Council Policy 359. The objective of this policy is to limit the proximity of

these high occupancy establishments and avoid clustering. The subject property is within 160 m of three other Large establishments and one Medium Establishment. Additionally, Council Policy 359 discourages Liquor Primary's with capacity's that exceed 500 persons.

4.0 Project Details

Existing Hours of Sale:

		Sun	Mon	Tues	Wed	Thurs	Fri	Sat
Open		9:00 AM	9:00 AM	9:00 AM	9:00 AM	9:00 AM	9:00 AM	9:00 AM
Close	Indoor	1:00 AM	1:00 AM	1:00 AM	1:00 AM	1:00 AM	1:00 AM	1:00 AM
	Roof Top Patio	12:00 AM	12:00 AM	12:00 AM	12:00 AM	12:00 AM	12:00 AM	12:00 AM

Occupant Load:

	Existing
Indoor	227 Persons
Rooftop Patio	238 Persons
Bernard Avenue Patio Program	40 Persons
Total	505 Persons

5.0 Site Context & Background

Orientation	Zoning	Land Use
North	UC1 – Downtown Urban Centre	Park
East	UC1 – Downtown Urban Centre	Food Primary Establishment
South	UC1 – Downtown Urban Centre	Food Primary & Personal Service Establishment
West	UC1 – Downtown Urban Centre	Food Primary Establishment

Subject Property Map: 257-261 Bernard Ave



5.1 Background

In 2018, a Food Primary Licence with permission to operate past midnight was approved by Council. Food Primary Establishments are permitted to apply for up to 6 Special Event Permits on a yearly basis. Since opening in 2018 Craft has applied for 4 special event licences.

6.0 **Current Development Policies**

6.1 Council Policy #359 – Liquor Licensing Policy and Procedures

The following sections of Policy #359 are applicable to a Liquor Primary application:

1) Siting/Density Guidelines.

b) Large establishments (with person capacity greater than 249 persons):

i) Should only be located within an Urban Centre.

The subject property is located within the Downtown Urban Centre.

ii) Should be located a minimum of 250m from another Large establishment.

Distrikt Nightclub - approx. 160 m, with a capacity of 440 persons.

Bernie's Supper Club – approx. 145 m, with a capacity of 333 persons.

Liquid Zoo Show Lounge – approx. 30 m, with a capacity of 500 persons.

Cheetahs Show Lounge – approx.. 6m, with a capacity of 200 persons.

iii) Should be located a minimum of 100m from a Medium establishment.

Cheetahs Show Lounge – approx. 8 m, with a capacity of 200 persons.

iv) Should not be located beside a Small establishment

The subject property is not located adjacent to a Small establishment.

a) New patios associated with liquor establishments should be located and designed to limit potential impacts on surrounding property 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).

6.2 R.C.M.P.

No concerns.

7.0 **Application Chronology**

Application Accepted: June 14, 2023

Date of Neighbourhood Consultation Completion: July 25, 2023

8.0 **Alternate Recommendation**

THAT Council directs Staff to forward the following Recommendation to the Provincial Liquor and Cannabis Regulation Branch (LCRB):

In accordance with 'Division 9 (71)' of the Liquor Control and Licensing Regulation and Council Policy 359, BE IT RESOLVED THAT:

- 1) Council recommends support of an application from Blue Diamond Hospitality Inc for a Liquor Primary License, located at Parcel Z (Plan B5763) Block 13 District Lot 139 ODYD Plan 462, Kelowna, BC for the following reasons:
 - i. The application is contrary to Council Policy #359: Liquor Licensing Policy & Procedures for Liquor Primary (LP) Establishments;
 - ii. The application is contrary to the 2040 Official Community Plan which indicates significant residential growth in this area;
 - iii. The increase of noise and activity associated with a large rooftop Liquor Primary License may adversely affect current and future area residents;
 - iv. The hours of operation for the patio areas shall be reduced to 9:00 am to 11:00 pm;
- 2) Council's comments on LCLB's prescribed considerations are as follows:
 - a. The location of the establishment:

The location is in the Downtown Urban Centre on Bernard Avenue which is intended for businesses with an entertainment focus.
 - b. The proximity of the establishment to other social or recreational facilities and public buildings:

The location is in close proximity to several food primary establishments, liquor primary establishments and government buildings.
 - c. The person capacity and hours of liquor service of the establishment:

The proposal does not seek changes to the current person capacity of 505 persons. The hours of the outdoor patio may affect nearby residents.
 - d. The number and market focus or clientele of liquor-primary license establishments within a reasonable distance of the proposed location:

The 200 block of Bernard Ave contains several liquor-primary licenses ranging in scale, hours, and focus.
 - e. The impact of noise on the community in the immediate vicinity of the establishment:

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

The potential for negative impact on the community may increase due to the size, capacity, and hours of the establishment on the rooftop patio with the addition of Patron Participation Entertainment uses, which is contrary to Council Policy #359 which states that Patios associated with liquor establishments should be located and designed to limit potential impacts on surrounding property owners.
- 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: Jason Issler, Planner I
Reviewed by: Lydia Korolchuk, Planner Specialist
Reviewed by: Jocelyn Black, Urban Planning Manager
Approved for Inclusion: Ryan Smith, Divisional Director, Planning & Development Services

Attachments:

Attachment A: Letter of Rationale

For additional information, please visit our Current Developments online at www.kelowna.ca/currentdevelopments.