

Memo



Date: February 10/10
To: City Manager
From: Community Sustainability Division
File No: Z09-0027 - 248 Leon Avenue (Habitat) - Supplemental Report
Report Prepared By: Luke Turri

1.0 RECOMMENDATION:

THAT Council receive, for information, the report from the Community Sustainability Division dated February 10, 2010 with respect to the additional review completed for the proposed rezoning application;

AND THAT the Public Hearing with respect to Rezoning Application No. Z09-0027 be rescheduled to March 9, 2010.

2.0 BACKGROUND:

At the November 17, 2009 Public Hearing, Council considered a rezoning application for the Habitat at 238 Leon Avenue, requesting a zoning change from C7 - Central Business Commercial, to C7LP - Central Business Commercial with Liquor Primary to allow the existing food primary establishment to seek a Liquor Primary license from the Liquor Control and Licensing Branch (LCLB). The following resolution was passed at that meeting:

THAT final adoption of Zone Amending Bylaw No. 10250 be subject to the registration of a Section 219 Restrictive Covenant on the title of the subject property, to include the following restrictions:

1. Any liquor license must limit total person capacity to a maximum of 300 persons;
2. Any liquor license must limit hours of liquor sale between 11:00am and 12:30am;
3. Any liquor primary license must be an "event centre" and may not be classified as a "cabaret", "nightclub", "public house" or "neighbourhood pub" as defined by the governing body of liquor licensing in British Columbia.

AND THAT the Public Hearing with respect to Bylaw No. 10250 be kept open pending confirmation from the Land Title Office and the Liquor Control & Licensing Branch that the proposed wording for the Section 219 Covenant is acceptable;

AND THAT staff clarify the "minors' endorsement" with the Liquor Control & Licensing Branch and report back to Council;

AND FURTHER THAT if the Section 219 Covenant wording is not acceptable to the Land Title Office and/or the Liquor Control & Licensing Branch, staff provide Council with other zoning and licensing options for consideration.

The Public Hearing with respect to this item was kept open by Council, therefore, Council did not give second and third reading consideration to the Bylaw.

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2.1 Section 219 Covenant

The LCLB has no concerns with the proposed covenant. However, after discussion with the Land Titles Office, the proposed Section 219 covenant to limit person capacity, hours of liquor sale and license classification has been deemed unacceptable. As such, the covenant is not a viable option to restrict license changes.

2.2 Minor's Endorsement

The LCLB has provided clarification with regards to a minors' endorsement summarized below:

As described in Policy Directive 03-03, minors are generally not permitted in a liquor primary establishment, with very few exceptions. The Liquor Control and Licensing Branch regulation permits minors in venues where it is deemed to be in the public interest. For other types of LP establishments not specified in regulation, minors are prohibited unless the licensee can establish that it is in the public interest to permit minors, and that their circumstances differ from similar establishments. Where it is determined to be in the public interest, the General Manager [LCLB] has the authority to grant discretion to allow minors, and may impose terms and conditions on their presence.

Here is a general description of some of the types of establishments where minors have been permitted:

- Convention centres - Venues with multiple conference/meeting rooms of a reasonable size and number to attract conferences. These establishments often have associated amenities such as a restaurant, and hotel or resort accommodations.
- Concert halls and theatres - A performance venue used for live music, theatre or other cultural performances, generally with theatre style seating and a lobby area.
- Cultural centres - Similar to above, this is a venue with a cultural or artistic focus that would support cultural performances, and other events of a cultural nature. These establishments would generally include a theatre or concert hall. These tend to serve as a community resource, and would be run by a non-profit society of a local government as opposed to a business.
- Aircraft, trains and motor vessels.

The LCLB has reviewed Habitat's business plan submission and has determined that a Minor's Endorsement is not appropriate for this establishment. In addition, if granted a Liquor Primary license, the LCLB would not consider "de-licensing" the establishment for special events permitting minors.

Given the above considerations, the applicant has decided to move ahead with the application without seeking the minors' endorsement.

2.3 Other Considerations

"Event-driven Establishment"

The applicant is still pursuing an "event-driven" license classification. The LCLB has provided additional information to provide clarity as to intent of this type of license:

- Event-driven refers to live events, where the primary presentation is offered through individuals who are physically performing an event (live theatre, dance, musical performers, etc.) or where the primary focus is on presentations by live speakers.
- This license is typical of concert halls, conference centres, stadiums and cultural centres.
- Liquor service is event-driven only, and is typically limited to one hour prior to, during, and one hour after a live event, as defined on the license.

Transfer of Ownership & Change to Business Focus/Classification

Council formerly expressed concerns about future transfer of ownership for Habitat, and how that may influence the future operation/classification of the establishment. The LCLB has an extensive process through which license transfer applications are reviewed, however, there is no authority for the local government to provide input or to be consulted on these matters.

Generally speaking, liquor primary licensees are free to change their business focus at any time, whether or not there is a transfer of licence ownership. This means that licensees could change from a wine bar to a sports bar, or a neighbourhood pub to a nightclub. These changes do not require or allow for input from local government unless they are accompanied by changes that do require LCLB approval and local government comment set out in regulation, namely: an increase to hours of sale, person capacity or licensed area. The exception to this policy is for event-driven establishments.

Unlike other license types, in providing a resolution on a licence that is event-driven, a local government or First Nation can make their support for an event-driven licence application contingent on the license remaining event-driven. Under these circumstances, the LCLB would attach terms and conditions to this effect on the licence. These recommendations would be made through the provincial liquor license referral process. Should Council choose to support the proposed zoning amendment, this formal referral would be presented at a later date.

Occupant Load Calculation/Licensed Person Capacity

Since the November 17, 2009 Public Hearing, the applicant has received a formal Occupant Load Calculation from the City of Kelowna's Building & Permitting Branch. Based on this calculation, the person capacity for Habitat would be 225 persons. This is significantly less than the applicant's original calculations and would be under what was originally specified for the proposed Section 219 covenant (less than 350 persons).

3.0 LAND USE MANAGEMENT DEPARTMENT COMMENTS:

Through information received since the November 17, 2009 Public Hearing, some of the concerns shared by the Land Use Management Department and the RCMP have been alleviated. The applicant is no longer seeking a minors' endorsement, and the licensed person capacity would be 225 persons. Staff suggested that the minors' endorsement would not be appropriate and difficult to enforce in the adult-orientated Leon/Lawrence area, and that the person capacity of over 300 persons would put further strain on police resources during the "bar flush" period after 2am. With the person capacity confirmed at 225 persons (an addition of 92 from the existing food primary license), and hours of sale proposed to end at 12:30am, concerns of exacerbating the existing bar flush situation would be mitigated.

Staff also notes Council's ability to have their support of the proposed license be contingent on the establishment being event-driven. In this case, changing from event-driven to a new license type (pub, cabaret, etc.) by current or future business owners would trigger a local government referral process, as if it were a new liquor primary application. However, as application is specific to the zoning of the property, license specifics - including this special contingency - would be confirmed at a future meeting. Should Council give favourable consideration to this rezoning application, the liquor license referral process would further define/clarify licensing concerns (hours of sale, person capacity, etc).

Despite the new information provided, the proposed rezoning would still be in contravention of Council Policy #315, particularly the subject property's location within the "Yellow Zone" as defined within the Downtown Plan and affirmed by the findings of the Mayor's Entertainment

District Task Force (2004). Based on this policy, the Land Use Management Department is unable to support the rezoning application.



for

Shetley Gambacort
Director, Land Use Management

Approved for inclusion:



Jim Paterson
GM, Community Sustainability
