

# REPORT TO COUNCIL



**Date:** January 27, 2012  
**To:** City Manager  
**From:** Land Use Management, Community Sustainability (LT)  
**Application:** LL11-0015                      **Property Owner:** 456288 BC Ltd.  
**Address:** 279 Bernard Avenue              **Applicant/Licensee:** Fernando's Taqueria  
**Subject:** Proposed Liquor Primary License

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## 1.0 Recommendation

In accordance with Section 53 of the *Liquor Control and Licensing Regulation* and Council Policy #359, be it resolved THAT:

Council's comments on the Liquor Control & Licensing Branch (LCLB)'s prescribed considerations for the application from Fernando's Taqueria at 279 Bernard Avenue, Kelowna BC, (legally described as the easterly 26 feet of Lot 12, Block 13, District Lot 139, ODYD, Plan 462) for a Liquor Primary license with a capacity of 88 persons and hours of service from 10:00am-2:00am daily are as follows:

**a) The location of the establishment:**

The property is located within the Downtown core, and is suitable for the proposed small-scale Liquor Primary license.

**b) The proximity of the establishment to other social or recreational facilities and public buildings:**

No negative impact on surrounding facilities/buildings is anticipated.

**c) The person capacity and hours of liquor service of the establishment:**

The capacity and hours are deemed appropriate based on other establishments in the immediate area.

**d) The number and market focus of liquor-primary license establishments within a reasonable distance of the proposed location:**

The size and focus of the establishment would compliment existing establishments in the Downtown area.

**e) The impact of noise on the community in the immediate vicinity of the establishment:**

Only incremental changes in noise impacts are anticipated compared to the existing Food Primary operation. The potential for noise would be compatible with surrounding land uses.

**f) The impact on the community if the application is approved:**

The proposed license would add to the continued development of a safe, vibrant Downtown area.

**g) View of residents:**

The Council's comments on the views of residents (if applicable) 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 & Procedures."

**h) Recommendation:**

Council recommends that the application for a Liquor Primary license be approved.

## **2.0 Purpose**

This application seeks Council's support for a Liquor Primary (Pub) license for the existing Food Primary (Restaurant) establishment.

## **3.0 Land Use Management**

Council Policy #359 specifies guidelines for the siting and density of Liquor Primary Establishments. These parameters are designed to help control the density of late-night establishments with a focus on alcohol (nightclubs, pubs, etc.). Given the location of existing establishments in the area, the application complies with Policy #359.

Aside from revised siting/density regulations, the Liquor Policy Review also provided other direction regarding the development of Kelowna's entertainment districts, including support for a range of establishment types and sizes. The application represents a modest increase in capacity, and is not perceived to change the operation/clientele of the establishment. The proposed license would create greater opportunities to serve a range of patrons, and compliment existing licensed establishments, without causing significant changes to the existing business operation.

Given the above considerations, the Land Use Management Department is supportive of the proposed Liquor Primary establishment. In addition, both the RCMP and Bylaw Enforcement have no concerns with the proposal.

## **4.0 Summary**

### **4.1 Background**

An application has been forwarded by the licensee to the Provincial Liquor Control and Licensing Branch (LCLB) for their approval. Procedurally, all new Liquor Primary license requests require Local Government comment.

The existing restaurant, Fernando's Taqueria, has operated under a Food Primary license at the subject property since 2011.

### **4.2 Proposal**

The applicant has requested a Liquor Primary (LP) license to replace their existing Food Primary license. The LP is being requested to allow for greater flexibility in serving patrons, as well as to provide opportunities for live music. No changes to the existing interior are proposed, however, the change in license type would allow for a small increase in person capacity to the existing Food Primary license capacity (an increase of 18 persons).

The existing Food Primary has a person capacity of 62 persons, with an additional 8 seats on the seasonal patio.



**Proposed License Summary:**

Licensed Area	Capacity
Indoor (Dining Area)	80
Outdoor Patio	8
<b>Total Proposed Person Capacity</b>	<b>88*</b>

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

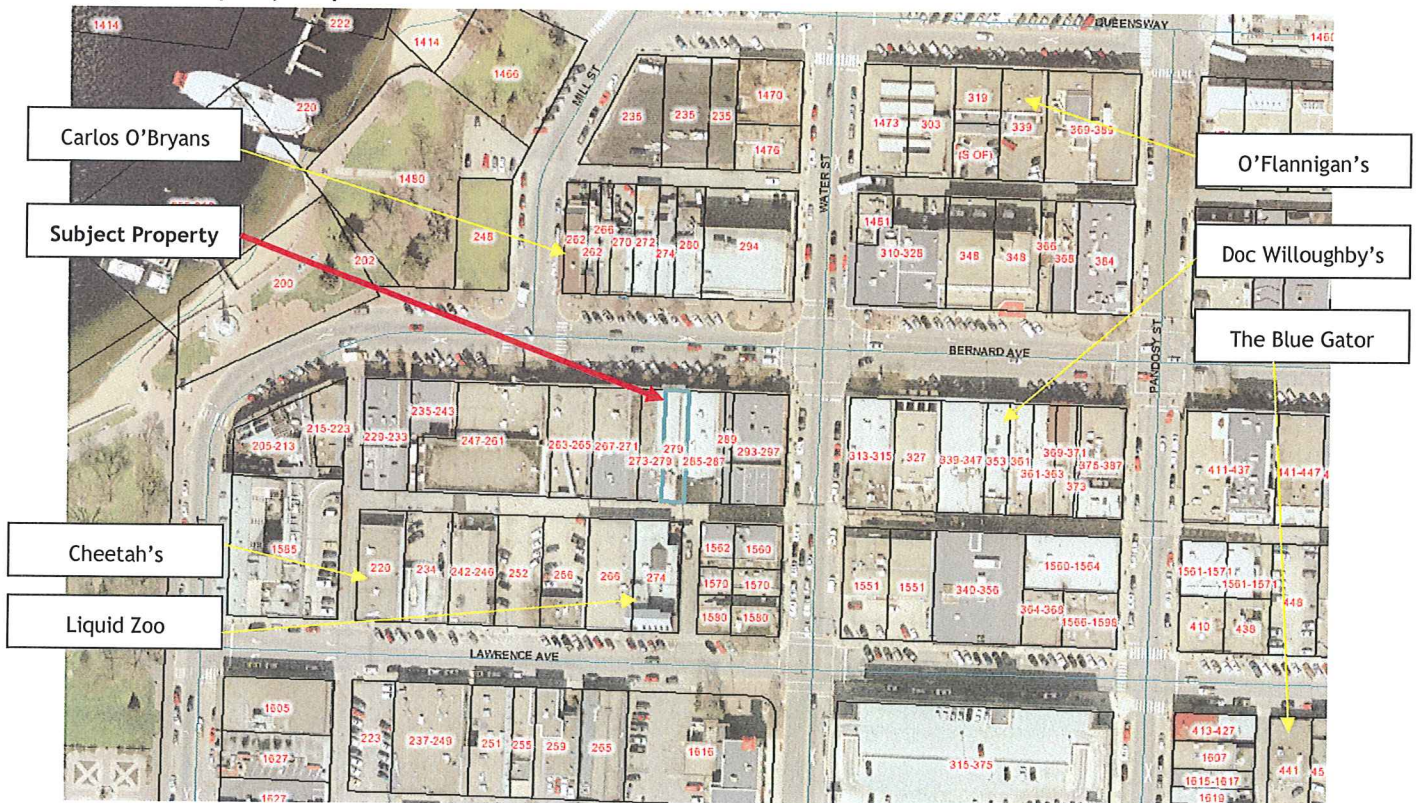
**Proposed Hours of Sale:**

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Open	10:00am	10:00am	10:00am	10:00am	10:00am	10:00am	10:00am
Close	2:00am	2:00am	2:00am	2:00am	2:00am	2:00am	2:00am

**4.3 Site Context**

The subject property is located on the south side of Bernard Avenue, west of Water Street, in the core of the Downtown Urban Centre. The surrounding land uses are a mix of commercial uses, with predominately food & beverage and retail uses.

Subject Property Map: 279 Bernard Avenue





Other liquor primary establishments (pubs, nightclubs, casino) in the surrounding area include:

Establishment	Proximity	Category	Capacity	Establishment Type
Carlos O'Bryans	-60m	Small	60	Neighbourhood Pub
Doc Willoughby's	~100m	Medium	180	Neighbourhood Pub
Liquid Zoo	~160m	Large	301	Adult Entertainment
O'Flannigan's	~200m	Medium	148	Neighbourhood Pub
Cheetah's	~250m	Medium	218	Adult Entertainment
Level	~275m	Large	464	Cabaret
The Habitat	~300m	Medium	225	Music Venue
Sapphire	~310m	Large	473	Cabaret

## 5.0 Existing Policies

### 5.1 Council Policy #359 - Liquor Licensing Policy & Procedures & Liquor Policy Review

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

- Small establishments (with person capacity less than 100 persons):
  - i) Should not be located beside an existing Small establishment.

The Liquor Policy Review (2011) noted that a variety of small-scale licensed establishments add to vibrant, mixed-use urban centres, and may be supported where appropriate.

### 5.2 Kelowna Official Community Plan 2030

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

**Downtown.**<sup>2</sup> The City of Kelowna recognizes that a unique, attractive, thriving and livable downtown is strategically important to Kelowna's overall prosperity and success. Towards this end, the City will plan and manage the Downtown as a single and special entity and will take a proactive, comprehensive, integrated and collaborative approach towards providing services and infrastructure, delivering programs, and developing a supportive regulatory and financial environment.

## 6.0 Circulation Comments

The application was circulated to a number of departments and agencies, including the Building & Permitting Branch, Bylaw Services, Fire Department, and the Kelowna RCMP. No concerns were raised from the circulation.

<sup>1</sup> Policy 5.17.1 (Development Process Chapter)

<sup>2</sup> Policy 8.9.2 (Economic Development Chapter)

Report prepared by:



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Luke Turri, Land Use Planner

Reviewed by:



Danielle Noble, Manager, Urban Land Use Branch

Approved for Inclusion:

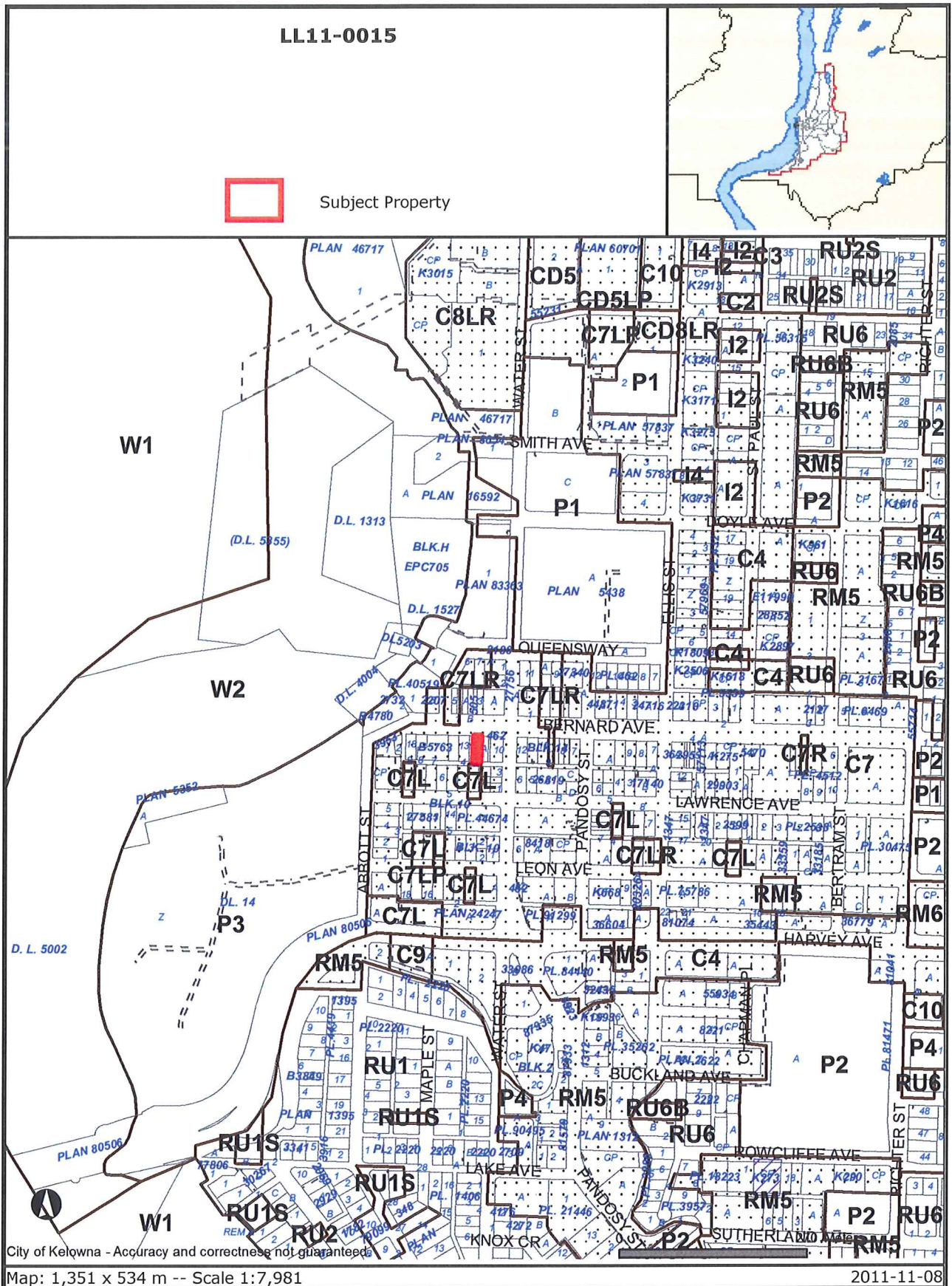


Shelley Gambacort, Director, Land Use Management

**Attachments:**

Subject Property Map  
Existing Floor Plan  
Council Policy #359



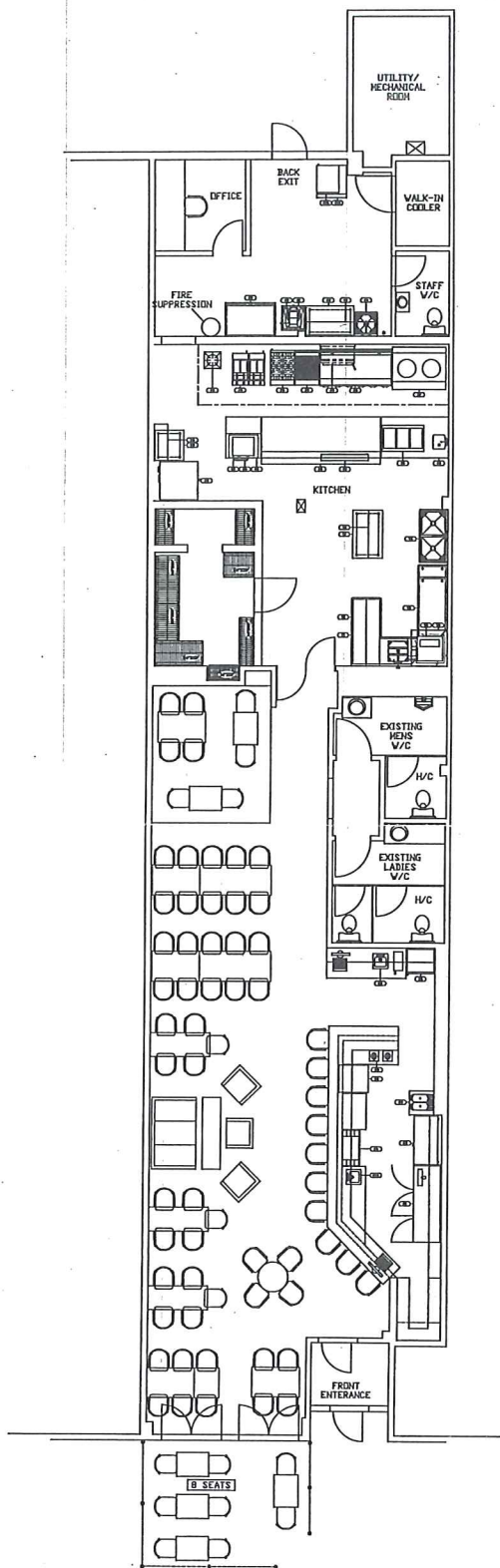


Certain layers such as lots, zoning and dp areas are updated bi-weekly. This map is for general information only.  
The City of Kelowna does not guarantee its accuracy. All information should be verified.

**CRS**

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VANCOUVER, BC V6N 1Y1  
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www.crsindustrialrestaurantupply.ca

**FERNANDO'S  
TAQUERIA  
KELOWNA, BC**



**BERNARD AVENUE**

KITCHEN EQUIPMENT PLAN	
DATE:	
PROJECT NAME:	
CLIENT:	
DESIGNER:	
SCALE:	
DRAWING NUMBER: <b>KEC-1</b>	

**RESTAURANT/PUB PLAN**





City of Kelowna  
1435 Water Street  
Kelowna, BC V1Y 1J4  
250 469-8500  
kelowna.ca

# Council Policy

## Liquor Licensing Policy & Procedures

APPROVED February 21, 2011

RESOLUTION: R170/11/02/21  
REPLACING: Council Policy No. 315  
DATE OF LAST REVIEW: February 2011

### A. BACKGROUND

The Provincial Liquor Control and Licensing Branch (LCLB) regulates the licensing of all liquor establishments and the retail sale of alcohol in British Columbia. City of Kelowna Municipal Council is referred on a number of these applications, including Liquor Primary applications, and other license endorsements. Local government comment is a key component of the LCLB's licensing decisions.

Council recognizes the importance of public entertainment venues, including liquor establishments, as a component of all vibrant cities. Managing the priorities of all community stakeholders is a delicate balance. As part of Council's on-going interest in establishing vibrant, livable Urban Centres, a 2003 report from the Mayor's Entertainment District Task Force was endorsed, relating to liquor licensing policy. The relevant policy from this 2003 report was adopted in former Council Policy #315 – "Liquor Licensing Procedures Liquor Primary (lp) and Retail Liquor Sales (rls)". At Council's request, a new review was completed by City staff in 2010. This new policy summarizes the pertinent policies endorsed in the Liquor Policy Review (2010), and is intended to guide future liquor license applications – including Provincial referral requests and rezoning applications on a City-wide basis.

### B. LIQUOR PRIMARY (LP) ESTABLISHMENTS

In consideration of new, expanded or relocated Liquor Primary Establishments (cabarets/nightclubs, pubs, lounges), the following guidelines should be considered (see table below):

#### 1. Siting/Density Guidelines:

- a) No establishment with a person capacity greater than 500 persons should be permitted.
- b) Large establishments (with person capacity greater than 249 persons):
  - i) Should only be located within an Urban Centre.
  - ii) Should be located a minimum of 250m from another Large establishment.
  - iii) Should be located a minimum of 100m from a Medium establishment.
  - iv) Should not be located beside a Small establishment.
- c) Medium establishments (with person capacity between 100-249 persons):
  - i) Should only be located within an Urban or Village Centre.
  - ii) Should be located a minimum of 100m from a Large or Medium establishment.
  - iii) Should not be located beside a Small establishment.
- d) Small establishments (with person capacity less than 100 persons):
  - i) Should not be located beside another liquor primary establishment.

The above siting guidelines are summarized in the following table:

Establishment Type	Siting requirements from:			Location
	Small (<100 persons)	Medium (100-249 persons)	Large (250+ persons)	
Small (<100 persons)	Not beside.	Not beside	Not beside	City-wide
Medium (100-249 persons)	Not beside	Minimum 100m separation	Minimum 100m separation	Urban or Village Centre
Large (250+ persons)	Not beside	Minimum 100m separation	Minimum 250m separation	Only Urban Centre



For the purposes of determining proximity, shortest walking distance (door-to-door) will be applied. These distances are meant to guide staff in their recommendations for particular applications, however, a number of other factors should be considered, including (but not limited to):

- a) Pertinent input from the RCMP;
- b) Vehicular and pedestrian traffic patterns for area and current zoning;
- c) Availability of on-site and off-site parking; proximity of playgrounds, schools, and other social facilities;
- d) Surrounding land-uses, and general impact on the local neighbourhood;
- e) Correspondence received from abutting property owners;
- f) Past licensee compliance and performance issues as may be provided by the LCLB.

## 2. Other Policies:

- 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)

## **C. RETAIL LIQUOR SALES (RLS)**

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The following considerations should be made for the location of liquor stores/retail liquor sales (RLS):

- a) Continue to require new or relocated RLS establishments to apply for a rezoning application to allow for "Retail Liquor Sales" in applicable zones.
- b) No Retail Liquor Sales shall be approved for (in conjunction with) Liquor Primary Establishments with person capacity that exceed 150 persons.
- c) Any new or relocated Retail Liquor Sales establishment shall not be located within 300 m of an existing Liquor Primary establishment with a person capacity greater than 350 persons.

## **D. NEW LICENSES AND PERMANENT LICENSE CHANGES**

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Permanent License Changes requiring local government comment (new, expanded or amended Liquor Primary licenses, Food Primary licenses operating later than midnight, Patron Participation Entertainment endorsement, winery lounge/special event area endorsements, etc):

### 1. Application & Submission Requirements:

- a) Applicants are encouraged to conduct a pre-application meeting with Land Use Management to discuss application process and submission requirements.
- b) Applicant must submit a City of Kelowna Liquor License Application in order to receive Council resolution.
- c) Applicant must show proof of application to the LCLB prior to municipal consideration.
- d) If approval is required by the Agricultural Land Commission, this must be addressed prior to City application.
- e) Proof of consultation with pertinent Business Improvement Association, Industry Association, and/or Resident's Association is required.
- f) It is suggested that applicants consider hosting a neighbourhood information meeting to provide an informal opportunity to discuss and resolve any potential neighbourhood concerns with the proposal prior to Council consideration.
- g) Amendments to submission requirements are at the discretion of the Director of Land Use Management.

### 2. Municipal Review Process:

- a) Upon submission, staff will circulate the application to pertinent departments and agencies, prior to a staff report being presented to Council.
- b) Applications will be subject to a public meeting (or a Public Hearing where the application is being considered concurrently with a rezoning application). The applicant is responsible to the costs of advertising for the public meeting (see notification requirements below).

- c) The Land Use Management Department shall make a recommendation to Municipal Council regarding the proposal. Council shall make its decision based on this recommendation as well as the information received at the Public Hearing or Public Meeting.
- d) The resolution from Municipal Council is then forwarded to the LCLB by the Land Use Management Department for their final review.

**3. Notification Requirements:**

- a) Notification requirements are as per Development Application Procedures Bylaw.
- b) The applicant will be required to place notification signage on the property at least ten days prior to the public meeting date. Signs are to be purchased at City Hall.
- c) Notification is sent to property owners within a distance of 100 metres in Urban Centres and 400 metres in all other areas. This notification is coordinated by the Office of the City Clerk.
- d) Newspaper advertisements must take place in a least two consecutive issues, with the last publication to appear not less than three and not more than ten days before the Public Hearing or Public Meeting. Municipal Staff shall be responsible for the placement of the notification with the appropriate papers.
- e) Public notification and newspaper advertisement shall be completed at the applicant's expense.

## **E. TEMPORARY LICENSE CHANGES**

Temporary license changes may be considered by the Director of Land Use Management. Temporary Changes will only be considered by Council should the applicant wish to appeal the decision of the director.

Where appropriate, temporary changes are reviewed with the RCMP, Fire Department, Inspection Services Department, and the local liquor inspector.

Staff may consider up to three temporary license changes per calendar year for Liquor Primary establishments, including late closing requests. These requests will be considered on a case-by-case basis, and may be subject to additional policing costs being paid prior to the event (for example, 4:00am closings).

## **F. SPECIAL OCCASION LICENSE**

The following considerations should be applied to Special Occasion License requests:

- a) SOL requests that require RCMP/Local Government consideration will be evaluated on a case-by-case basis.
- b) Review of SOL requests will include review of a number of factors, including (but not limited to) location, capacity, hours of operation, previous compliance, and impact on surrounding neighbours.
- c) SOL requests are intended to be for infrequent events, and are not to be used as a substitute for a permanent liquor license at a venue. Attention will be given to the number of SOL requests made in a given time period at one property.
- d) The RCMP have the authority to place additional restrictions on SOL's should they have public safety concerns associated with the event.
- e) No SOL's are to be granted where the proposed event is intended to cater to youth or where youth (under the age of 19) will be present.
- f) SOL licensees are to retain qualified private security personnel to monitor access to and from licensed events, where requested.
- g) All SOL events must respect the City of Kelowna Noise Bylaw.

### **REASON FOR POLICY**

To establish revised policy and procedures for processing liquor license applications.

### **LEGISLATIVE AUTHORITY**

Liquor Control & Licensing Act

### **PROCEDURE FOR IMPLEMENTATION**

As outlined in the Liquor Policy Review Final Report.