



THE CORPORATION OF THE CITY OF COURTENAY

## STAFF REPORT

**To:** Council

**File No.:** 4530-20/LL000018

**From:** Director of Development Services

**Date:** December 6, 2023

**Subject:** Permanent Change to Liquor Licence Application (Kelly/Carlos O'Bryan's) hours of service –  
2910 Kilpatrick Avenue

### PURPOSE:

The purpose of the report is to seek Council's support for a Liquor Licence Application to extend liquor sale hours for Kelly O'Bryan's from midnight to 1:00 am Monday to Saturday and to provide a resolution to the LCRB as required under the legislation.

### BACKGROUND:

Kelly/Carlos O'Bryan's pub and bar are seeking to obtain a permanent change to expanded hours of service for a food primary licence (Kelly O'Bryan's) at the above referenced business location, allowing both sides of the business (pub and bar) and its patio to remain open until 1:00am Monday to Saturday, an hour later than currently permitted for the pub and patio portion of the business. The applicant is making an application to the LCRB for the following changes to their existing liquor licence for the property at 2910 Kilpatrick Avenue:

A change in hours of liquor sales for the pub and patio portion of the business from 9:00am – 00:00am Monday – Saturday to 09:00am – 01:00am

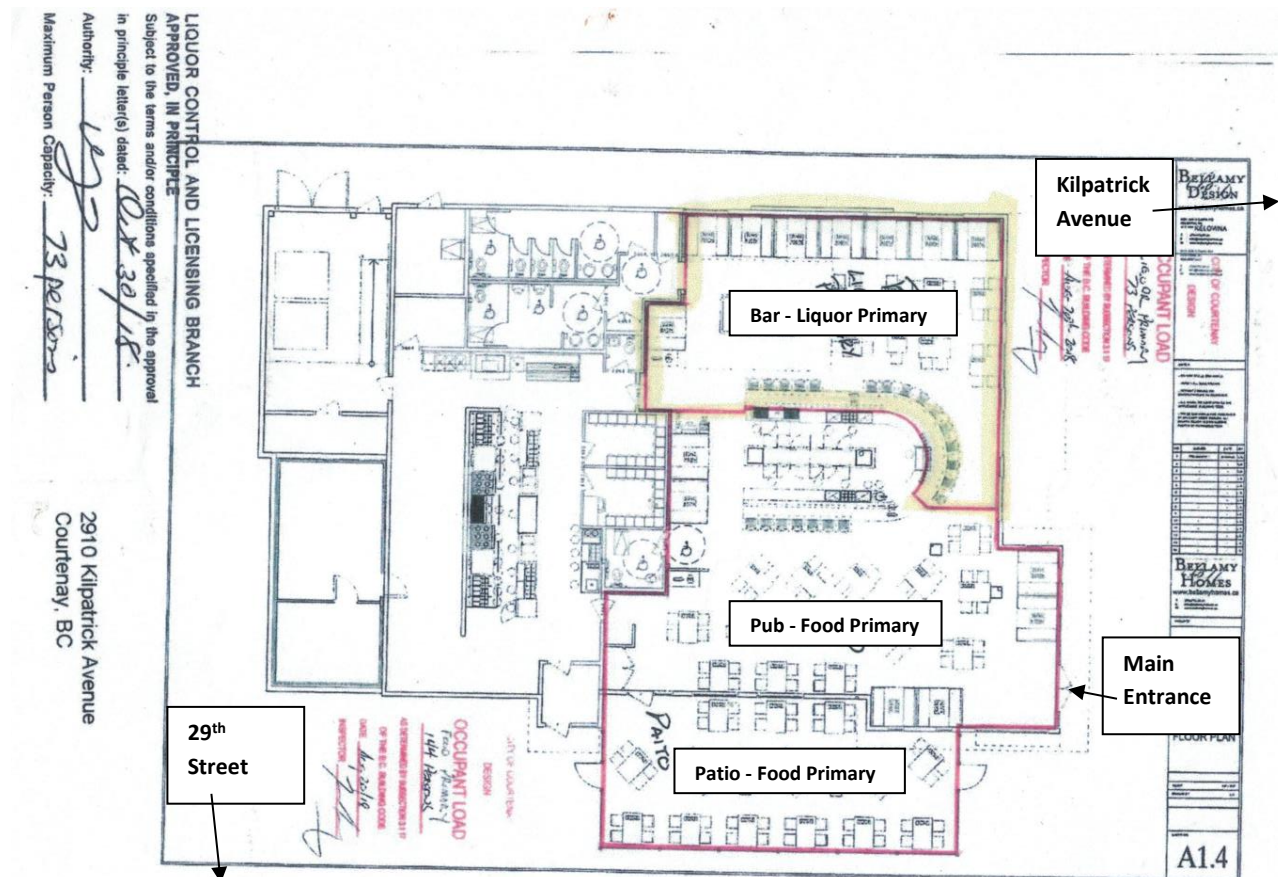
The property has two operations Kelly O'Bryan's which currently closes at 00:00 and Carlos which closes at 1:00am. The request to the LCRB is for Kelly O'Bryan's to extend the liquor sales hours from midnight (00:00) to 1:00 am to align with Carlos' liquor sales hours. The applicant's rationale, which discusses the request and the project, can be found in **Attachment No. 1**.

### DISCUSSION

Pursuant to Section 38 (1) of the *Liquor Control and Licencing Act*, such a liquor licence must not be issued or amended unless the applicant has given the local government notice of application in accordance with the regulations. The City's responsibility is outlined in the Public Engagement section of this report.

The subject property is located approximately 44m from the intersection of 29<sup>th</sup> Street and Kilpatrick Avenue, and approximately 120m from the intersection of 29<sup>th</sup> Street and Cliffe Avenue. The property is surrounded by other commercial properties, and is near the Driftwood Mall (**Figure No. 1**).





The subject location is zoned Commercial Two (C-2) which permits the intended use. There is no proposed increase in capacity, and therefore no change to the required off-street parking on site.

The change in hours of liquor sales may increase noise nuisance; however, the business is surrounded by commercial businesses and is located approximately 135 metres away from the nearest residential use located at 2900 Cliffe Avenue. Additionally, permission to sell liquor with extended hours does not mean that the applicant will opt to have the premise open 09:00am - 01:00am each of the permitted days; the permission for extended hours allows for operational flexibility depending on such circumstances as scheduled events.

Among other referral bodies, staff has referred the application to enforcement branches of the RCMP, City departments, and other external agencies and received the following responses of note:

**RCMP** – Recommend that the City engage the Liquor Control and Licensing branch to have Liquor Inspector do inspections on hours of service. Otherwise, request is supported.

Staff recommendation is to support the application. A recommendation not to support the requested liquor licence amendments should include the specific considerations and reasoning of the Council, including public comments.

**POLICY ANALYSIS:**

The City of Courtenay has no established policy to direct the recommendations of Liquor Licences. Some communities have adopted such policies that guide decisions based on location within the community and in proximity to particular uses, the density and proximity of licenced establishments to each other, acceptable occupancy thresholds for different types of licenced facilities, and enforcement history. Such policies also may contain procedural policy such as public notification requirements. Some communities also enshrine operating hours for patios within bylaws as an enforcement tool to mitigate the impact of noise to neighbours.

**FINANCIAL IMPLICATIONS:**

There is no direct financial implication related to this application. The application fee for all types of liquor licence applications is \$500 plus GST.

**ADMINISTRATIVE IMPLICATIONS:**

Administration of liquor licencing is included in the City's general statutory duties. Staff are working on a Liquor Licencing Policy that will establish a process for the referrals received from the LCRB.

**STRATEGIC PRIORITIES REFERENCE:**

This initiative addresses the following strategic priorities:

- Local Economy - Identify appropriate roles and responsibilities for the City in the delivery of economic development services in the region

**PUBLIC ENGAGEMENT:**

Section 38 (3) of the *Liquor Control and Licensing Regulation* states that a local government or first nation that wishes to provide comments and recommendations must do so in accordance with the following requirements:

**38 (3)** A local government or first nation that receives notice under subsection (1) must, if it wishes to provide comments and recommendations under this section with respect to the application,

(a) take into account the prescribed criteria before providing the comments and recommendations,

(b) provide the comments and recommendations to the general manager

(i) in accordance with the regulations, and

(ii) within the prescribed time period, or any further period authorized by the general manager, and

(c) in the prescribed circumstances, gather the views of residents of an area determined by the local government or first nation in respect of the application by

(i) receiving written comments in response to a public notice of the application,

(ii) conducting a public hearing in respect of the application,

- (iii) holding a referendum, or
- (iv) using another method the local government or first nation considers appropriate.

With respect to the requirement in section 38 (3) (c) of the Liquor Control and Licensing Act, precedent City of Courtenay practice is to advertise a notice on the City's main webpage for two weeks, and additionally provide a mail out notice to neighbours on a case by case basis.

As of the date of this report, staff have received 0 responses and the public has until 1:00pm on December 6<sup>th</sup>, 2023 to respond. Staff will update Council with any additional comments provided by the public.

#### **OPTIONS:**

1. THAT Council direct staff to provide a response to the LCRB recommending approval of the change of hours citing no objections to the application by Kelly/Carlos O'Bryan's for a change in hours of foof primary liquor sales from 9:00am – 00:00am seven days a week (Monday – Sunday) to 09:00am – 01:00am Monday – Saturday and that all public comments be shared with the LCRB and encourages the LCRB to consult with the local community and work with the applicant to address public concerns, should the LCRB decide to approve the application. **(Recommended)**
2. THAT Council recommend that the LCRB not approve the application by Kelly/Carlos O'Bryan's and include the specific considerations and reasoning of the Council.

#### **ATTACHMENTS:**

1. *Attachment No. 1: Applicant's Rationale*

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Concurrence: Geoff Garbutt, M.Pl., MCIP, RPP, City Manager (CAO)