



REPORT | ADMINISTRATIVE REPORT TO COUNCIL

PRESENTED: November 21, 2017

REPORT: 17-120

FROM: Resort Experience

FILE: 8292.03

SUBJECT: LIQUOR LICENCES FOR NON-TRADITIONAL BUSINESSES

COMMENT/RECOMMENDATION FROM THE CHIEF ADMINISTRATIVE OFFICER

That the recommendation of the General Manager of Resort Experience be endorsed.

RECOMMENDATION

That Council authorize staff to convene an open house to engage the community as input to the development of municipal policy and regulations with respect to liquor licences for non-traditional businesses.

REFERENCES

Appendix “A” – Licensed Establishment Types and Capacities in Whistler

PURPOSE OF REPORT

Provincial liquor regulations now permit non-traditional businesses (businesses other than those primarily engaged in food, hospitality, entertainment or beverage service) to be issued a liquor licence. With hundreds of Whistler businesses now eligible to apply for a liquor licence, municipal staff have identified the need for guidelines as to the types of businesses which might be considered for a liquor licence and for municipal regulations to manage such licences. The purpose of this Report is to inform Council of the need for policy guidelines, to propose a regulatory approach and to ask Council to authorize an open house to engage the community.

DISCUSSION

Background

In British Columbia liquor licences are issued by the provincial Liquor Control and Licensing Branch (LCLB), and licensed establishments in Whistler operate with either a food primary or a liquor primary licence. The Resort Municipality of Whistler (RMOW) has a role in many liquor licence applications, because the LCLB must request comment from local government on licensing decisions that may have an impact on the community. As a year-round resort community with three million visitors a year, Whistler has more than one hundred licensed food and beverage establishments and several retail liquor stores. A table showing the current number, type, location and capacity of Whistler licensed establishments is attached as Appendix “A”.

In 2014 the provincial government announced 73 liquor policy recommendations as a result of a major liquor policy review, and most of those recommendations have now been fully implemented into provincial liquor policy. The policy permitting non-traditional businesses to apply for a liquor licence came into effect in January 2017. The new provincial policy states, “Any business, except those that operate in a motor vehicle or are primarily directed at minors, can now apply for a liquor primary licence.” The provincial policy further states that, “... any business, even businesses without a primary focus on food service, can now apply for a food primary licence. For example, a bookstore may apply for a food primary licence and have a restaurant space within the bookstore.”

Liquor Primary Licences for Non-Traditional Businesses

Liquor primary licences have traditionally only been issued to businesses such as pubs, lounges, bars, nightclubs and event driven conference or cultural centres. These businesses can be focussed on hospitality, entertainment or beverage service and there is minimal need to have food available. Liquor cannot be offered complimentary to customers – it must be sold. The new provincial policy permits any business, except those that operate in a motor vehicle or are primarily directed at minors, to apply for a liquor primary licence. A business with a liquor primary licence has a higher potential for negative community impacts than a business with a food primary licence.

Food Primary Licences for Non-Traditional Businesses

Food primary licences have traditionally been issued only to businesses such as restaurants and cafés. A food primary licensed business must have a fully operating kitchen, there must be a dedicated service area with tables and chairs for all patrons, and the focus of the business must be on food at all times when liquor is being served. The new provincial policy will now permit other, non-traditional businesses such as art galleries, museums or bookstores to apply for food primary licence. Because of the requirement for a kitchen to be in full operation and the necessity to be focussed on food service whenever liquor is served, it is not anticipated that non-traditional businesses with a food primary liquor licence would be a problem for the community.

City of Vancouver Policy on Liquor Licences for Non-Traditional Businesses

Other municipalities are reviewing their liquor policies in the light of the new provincial policies. The City of Vancouver engaged the public through surveys and meetings with community stakeholders, and then in a June 7, 2017 staff report made a number of recommendations. With regard to liquor sales by non-traditional businesses the report concluded,

“If Council were to support applications from all business types public access to liquor would likely expand. Depending on business uptake, alcohol could theoretically be purchased at most any retail or service shop. Using the liquor policy goals as a guide, staff recommend that applications be supported from arts and culture based establishments such as art galleries and museums.”

The report included the following draft City of Vancouver policy, which reflects a cautious approach to the increased availability of liquor:

“Given City liquor policy aims to balance access to liquor with the goal to protect public health and safety, only applications from arts and cultural organizations will be considered on a case by case basis. Support for the application will be subject to all existing Liquor Primary review processes and protocols, including issuance of a time-limited development permit.”

Interest from Whistler Businesses for a Liquor Licence

Several inquiries have been received from Whistler businesses about the possibility of obtaining a liquor primary licence to sell liquor as an additional service to complement their primary business. With the many businesses in the resort and the high concentration in Whistler Village, there are concerns about making liquor primary licences available to a large number of new businesses:

- Hundreds of Whistler businesses in all sectors could be eligible for the same liquor primary licence as a lounge, pub or nightclub.
- There is a minimal requirement for food with a liquor primary licence.
- Are there businesses that for the safety of customers, staff and the public are not compatible with consumption of alcoholic beverages? For example, driving a vehicle, participating in an activity requiring skill or having an element of risk?

- If many businesses were licensed to sell liquor by the glass, with no necessity to have food, how would this affect the Village atmosphere, nearby businesses, visitor experience and Whistler's reputation as a family friendly resort?
- How would non-traditional businesses with liquor primary licences impact the business of Whistler's existing liquor primary licensed establishments?
- Could the increased availability of liquor throughout the resort result in alcohol related harms?
- What would be the impact on Whistler's youth and young adults if liquor was served at most any type of business?

Municipal Policy Guidelines for Liquor Licences for Non-Traditional Businesses

Whistler's municipal role in liquor licensing is established in Council Policy G-17 *Municipal Liquor Licensing Policy*, which includes a framework for municipal policies, decisions and comments/recommendations to the LCLB regarding liquor sales, service, licensing and consumption. In response to the many new provincial liquor policies, on May 9, 2017 Council adopted amendments to Council Policy G-17, including guiding principles and policy guidelines for several types of liquor licence applications. Policy G-17, Section 7.0 *Policy Guidelines for Other Businesses Applying for a Liquor Licence* includes the following broad guidelines to be considered in the review of applications from "other" (non-traditional) businesses for a food primary or a liquor primary licence:

- a) The service of liquor and service areas must be complementary and subordinate to the primary business.
- b) Liquor service may be provided only when the primary business is operating, and hours of liquor service may not extend beyond the hours of the primary business. [only between 9 a.m. and 10 p.m. in accordance with Policy G-17, Section 5.0 *Policy for Hours of Liquor Service*]
- c) Access to the business by minors must be considered in the review process.
- d) The impacts on the community are considered and measures are proposed to mitigate potential negative impacts.
- e) The community supports liquor primary licence applications.
- f) Licence holders, managers and those who serve liquor must have LCLB required Serving It Right certification.

Community Health and Safety

Alcohol is a frequent part of Whistler's social culture, and it is vital that potential community impacts be considered in policies that could increase the availability of liquor in the community. Several of the Guiding Principles in Section 3.0 of Council Policy G-17 are relevant to community health, safety and livability:

- d) The food and beverage environment is perceived by visitors and residents as welcoming, safe and free of objectionable noise and disturbances.
- l) The impacts of licensing decisions on the community are identified and measures are taken to mitigate potential negative impacts. Higher impact decisions (those involving late-night drinking-only seats) are given a high level of scrutiny.
- m) A cautious approach to additional liquor primary capacity is taken. The impacts of changes made are monitored and inform future licensing decisions.
- o) The Whistler community encourages responsible alcohol consumption in consideration of potential alcohol related harms. Licensed establishments operate their businesses with a high level of social and civic responsibility.

Relevant to community attitudes toward alcohol, the Whistler Communities That Care organization has prepared two reports to assess the attitudes and vulnerabilities of Whistler school age and young adult populations: (1) the *Whistler Community Assessment 2014 Report* which identifies risk factors (including substance use) and harm prevention strategies for Whistler Grade 6-12 students and (2) the *Communities That Care (CTC) Whistler Young Adult Survey 2016* which explored substance use in Whistler's young adults (age 18-30). <http://www.ctcseatosky.com/wctc.html>

Regulation of Liquor Sales by Non-Traditional Businesses – Temporary Use Permits

To provide clarity to potential liquor licence applicants, it is important that the RMOW develop clear guidelines as to the type and location of non-traditional Whistler businesses which should be given consideration for a liquor primary licence. Further, a mechanism for municipal regulation of liquor service by such businesses is needed. Liquor service by non-traditional businesses is new to Whistler, and there could be unanticipated problems for the community. What would happen to the liquor licence if the primary business closes, moves, is sold or changes focus? To provide additional control over the issuance and management of liquor primary licences for non-traditional businesses, a municipal regulatory system should be developed which will:

- Provide a mechanism to allow the RMOW to determine the types and locations of non-traditional business that can be issued a liquor primary licence.
- Ensure that liquor service is complementary and subordinate to the primary business (i.e. it does not turn into an establishment engaged in hospitality, entertainment or beverage service).
- Ensure that liquor is provided only when the primary business is operating, and that hours of liquor service do not extend beyond the hours of the primary business.
- Provide the RMOW with the ability to (1) establish the interior capacity and (2) establish the size, capacity, appearance and hours of outdoor patios, if permitted.
- Ensure that the liquor licence is tied to the primary business at the time of application and is no longer valid if the primary business closes, moves, is sold or changes focus.
- Ensure that unaccompanied minors have the same right of access as they would to a similar business without a liquor licence.
- Provide the RMOW with the ability to discontinue a licence if it becomes a problem for the community, but ensure that well managed businesses can retain their liquor licence indefinitely.

Temporary Use Permits may provide an effective regulatory framework to allow the RMOW to have control over the issuance and management of liquor licences for non-traditional businesses. Temporary use permits are described in Division 8, Sections 492-497 of the *Local Government Act*, which states, "... a zoning bylaw may designate areas where temporary uses may be allowed, and specify general conditions regarding the issue of temporary use permits in those areas." Temporary use permits were used briefly during the 2010 Olympic and Paralympic Winter Games to permit games-related activities, and they are currently being used to regulate home-based artist studios. The following excerpt from the November 17, 2015 report to Council on Home-Based Artist Studios describes some of the advantages of their use:

1. Temporary use permits are considered on a case-by-case basis, incorporate flexible decision making guidelines, are discretionary and can contain site-specific conditions. The combination of these characteristics provides greater flexibility when responding to unique proposals while ensuring any undesirable proposals can be refused.
2. Unlike uses permitted through zoning, temporary use permits are valid for a limited period of time. When the permit expires the municipality can choose to renew the permit or that the use be discontinued.

- Because temporary use permits do not establish any permanent uses they are an ideal tool to test new land uses before considering allowing them permanently.

To confirm that temporary use permits could be used as intended by the RMOW, staff sought advice from legal counsel who confirmed that their use could address the RMOW objectives to regulate the sale of liquor by non-traditional businesses.

WHISTLER 2020 ANALYSIS

W2020 Strategy	TOWARD Descriptions of success that resolution moves us toward	Comments
Built Environment	Visitors and residents can readily immerse themselves in nature, free from noise and light pollution	
	To maintain vibrancy, Whistler Village is the core of the resort community	
Economic	Whistler has a diversified and year-round tourism economy	Liquor sales and service by non-traditional businesses could have impacts on existing businesses and the resort atmosphere, particularly in Whistler Village. A cautious approach should be taken, and regulations should be in place to ensure that impacts can be managed and monitored.
	The Whistler economy provides opportunities for achieving competitive return on invested capital	
	Locally owned and operated businesses thrive and are encouraged as an essential component of a healthy business mix	
	Whistler holds competitive advantage in the destination resort marketplace as a result of its vibrancy and unique character, products and services	
Health & Social	Community members eat healthy food, exercise and engage in leisure and other stress relieving activities that assist in preventing illness and they avoid the abusive use of substances that evidence indicates have negative effects on physical and mental health	Community health and safety impacts should be considered in any decision to increase the availability of alcohol in the community.
Partnership	Residents, taxpayers, business and local government hold a shared vision for the resort community and work in partnership to achieve that vision	Residents and the businesses should be engaged in policies and decisions that impact the community.
	Partners participate in policy making and other decisions at various levels of government where relevant	
Visitor Experience	The resort community's authentic sense of place and engaging, innovative and renewed offerings attract visitors time and time again	Maintaining a positive experience for Whistler visitors is of utmost importance when considering changes to the resort environment.
	The resort is comfortable, functional, safe, clean and well maintained	

W2020 Strategy	AWAY FROM Descriptions of success that resolution moves away from	Mitigation Strategies and Comments
N/A		

OTHER POLICY CONSIDERATIONS

Council Policy G-17 *Municipal Liquor Licensing Policy* includes guiding principles, specific licensing policies and municipal processing requirements and fees for various types of liquor licence applications, including applications from non-traditional businesses. The following municipal bylaws will be considered and may require amendment to implement regulations on the service of liquor by non-traditional businesses: “Zoning and Parking Bylaw No. 303, 2015”, “Business Licensing Bylaw No. 567, 1987” and “Business Regulation Bylaw No. 739, 1989”.

BUDGET CONSIDERATIONS

All costs for preparing the required bylaw amendments will be covered under existing Resort Experience Department budgets. Council Policy G-17 includes a guiding principle that, “All costs associated with the municipal review and processing of licence applications are borne by the applicant.”

COMMUNITY ENGAGEMENT AND CONSULTATION

Because of the potential for virtually hundreds of Whistler businesses to be eligible to apply for a licence to sell and serve liquor by the glass, it is appropriate that the community be engaged in the development of new policy. To that end, it is recommended that an open house be convened to give Whistler residents and businesses an opportunity to provide input into the types of non-traditional businesses to be considered for a liquor licence and the regulatory framework for the issuance and management of those licences. Members of the municipal Liquor Licence Advisory Committee (LLAC) will be included, representing the several types of establishments in the food and beverage sector, the accommodation sector, Whistler Community Services Society, the Whistler Detachment of the RCMP, Whistler Fire Rescue Service, the LCLB liquor inspector and a member of Council. Further, staff will reach out to the Whistler Chamber, Arts Whistler, Tourism Whistler, the Whistler Association of Retailers and Merchants, other business organizations, health and social services organizations, and the public at large.

Staff will then review the results of the community engagement and a proposed regulatory system with the LLAC. A report with a recommended regulatory system for liquor licensing of non-traditional businesses, including the comments and recommendations of the LLAC, will then be prepared for Council’s consideration.

SUMMARY

This Report provides background on the eligibility of non-traditional businesses for a liquor licence, current municipal policy, the policy of another municipality, community health and safety considerations, a proposed regulatory approach using temporary use permits and a community engagement recommendation for Council’s consideration.

Respectfully submitted,

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PLANNER
for
Jan Jansen
GENERAL MANAGER OF RESORT EXPERIENCE

APPENDIX A

Licensed Establishment Types and Capacities in Whistler

	Number of Establishments		Capacity		
	LP	FP	LP	FP	Total
Village Centre	20	28	4,574	5,183	9,757
Village North	4	18	610	2,569	3,179
Upper Village	6	10	1,319	2,180	3,499
Whistler Creek	3	8	598	1,278	1,876
Other Areas	2*	7	115	591	706
Total Establishments	35	71	7,216	11,801	19,017
Event-driven Facilities	3	0	5,786	0	5,786
Hotels Banquet Areas	0	9	0	8,465	8,465
On-Mountain Day Lodges	0	4	0	6,031	6,031
Grand Total	38	84	13,002	26,297	39,299

LP: Liquor primary, FP: Food primary

* Includes two brewery lounges, which can serve liquor similar to a liquor primary licence.

Retail liquor is sold at three government liquor stores and four private liquor stores.