



CITY OF HAMILTON
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Economic Development Division

TO:	Mayor and Members General Issues Committee
COMMITTEE DATE:	June 15, 2016
SUBJECT/REPORT NO:	On-Street Patio Pilot Program (PED16119) (Wards 1, 2, 3, 4, 6, 7, 9, 12, 13 and 15)
WARD(S) AFFECTED:	Wards 1, 2, 3, 4, 6, 7, 9, 12, 13 and 15
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SUBMITTED BY:	Jason Thorne General Manager Planning and Economic Development Department
SIGNATURE:	

RECOMMENDATION

- (a) That an On-Street Patio Pilot Program be approved to operate from July 1, 2016 to October 31, 2016 in accordance with the criteria and guidelines identified in Appendix “A” to Report PED16119; and limited to the following locations:
 - (i) A maximum of two per Business Improvement Area (BIA);
 - (ii) A maximum of two for the Kenilworth Merchant Association (from Main Street East to Barton Street East); and,
 - (iii) A maximum of two for the James Street North Merchant Association (from York Boulevard to Murray Street).
- (b) That applications for On-Street Patios during the 2016 pilot be reviewed through the City’s current Road Occupancy Permit (as modified);
- (c) That the Urban Renewal Section contribute a maximum of \$30,000 (from Project ID#s 8201603611 and 8201603100) to the Hamilton Municipal Parking System to compensate the Parking budget for any lost parking meter revenues associated with the 2016 On-Street Patio Pilot Program;
- (d) That staff be directed to report back in Q1/17 with an assessment of the 2016 On-Street Patio Pilot Program and with recommendations regarding the creation of a permanent program.

EXECUTIVE SUMMARY

This Report responds to the April 27, 2016 City Council direction that staff develop, for Council's consideration, a pilot program for implementation in 2016, to allow local businesses and / or the Business Improvement Areas (BIA's) and Merchant Associations to establish temporary seasonal patios and seating areas utilizing on-street parking spaces.

The recommended pilot represents a significantly streamlined and significantly less costly approach compared to the existing process that require Outdoor Patio Café Encroachment Agreements and Minor Site Plan applications.

The recommended On-Street Patio Pilot Program is in keeping with the City's Open for Business focus and also allows the enhancement of the public realm through placemaking within the BIA's and some Merchant Association areas, as well as facilitating enhanced business flexibility and viability.

There will be no user fees associated with the recommended On-Street Patio Pilot as the Urban Renewal Section will contribute funding to a maximum of \$30,000 (from Project ID#s 8201603611 and 8201603100) to the Hamilton Municipal Parking System to compensate the Parking budget for any lost parking meter revenues.

While the recommended pilot has been vetted by all affected staff / Divisions, time did not allow for full, comprehensive public consultation to take place. There are still unanswered questions at this point, and staff is hoping that the pilot will identify concerns which might need to be addressed as part of any permanent On-Street Patio Program.

Alternatives for Consideration – See Page 7

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: The Urban Renewal Section will contribute a maximum of \$30,000 towards the pilot project with \$24,000 being funded from Project ID# 8201603611 and \$6,000 funded from Project ID# 8201603100 to compensate the Hamilton Municipal Parking System for lost parking meter revenue associated with the pilot in 2016.

Staffing: N/A

Legal: The extension of patios into the road allowance carries with it an increased risk of injury or property damage due to a patio's proximity to vehicles. Even with the provision of \$5 M Commercial General Liability Insurance from the operator, Risk Management advises the City is still exposed to liability.

HISTORICAL BACKGROUND

On April 27, 2016, City Council passed the following motion:

“7.10 Proposed Pilot Program for the City’s Business Improvement Areas (BIAs) – Establishing Temporary, Seasonal Patios and Seating Areas Utilizing On-Street Parking Spaces (Item 8.3) (Green/Skelly)

WHEREAS outdoor patios and seating areas can enhance the vibrancy and activity on commercial streets;

WHEREAS opportunities for outdoor patios and seating areas on sidewalks is very limited, or impossible, in many of the City’s older commercial areas;

WHEREAS many small businesses and BIAs in the City’s older commercial areas could benefit from having additional outdoor space for their customers and clientele; and,

WHEREAS other cities in Ontario have implemented programs to support temporary, seasonal patios utilizing the on-street parking areas of commercial streets.

THEREFORE BE IT RESOLVED

- (a) That the Planning and Economic Development Department, with support from the Public Works Department, develop for Council’s consideration a report outlining a proposed pilot program for the City’s Business Improvement Areas (BIAs); Kenilworth Merchant Association; James Street North Merchant Association and all other Merchant Associations and all Business Areas with standard liability insurance in place, that would permit local businesses and/or the BIA’s to establish temporary, seasonal patios and seating areas with music/live entertainment utilizing on-street parking spaces and;
- (b) That the pilot program be ready for implementation in 2016;
- (c) That the pilot program include mechanisms to streamline any necessary approvals to permit temporary, seasonal patios and seating areas while ensuring appropriate regard to issues such as safety, traffic flow, parking revenues and other matters; and,
- (d) That the report include a process for monitoring the success of the pilot program, and a mechanism for reporting back to Council with recommendations for the continuation and / or expansion of the program in 2017 for Council’s consideration”

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

Urban Hamilton Official Plan (UHOP) (as consolidated 2015): staff is of the opinion that the proposed On-Street Patio Pilot Program meets the intent of several official plan

policies as it provides additional amenities and spaces which have the potential to encourage pedestrian activity and more importantly, animate the streetscape.

Zoning By-laws for the Former Communities: for the purposes of this pilot program, On-Street Patios shall not be subject to an Outdoor Boulevard Café Encroachment Agreement or Minor Site Plan Application. However, all proposed On-Street Patios must be located within a zone that permits Outdoor Commercial Patios.

RELEVANT CONSULTATION

Building, Public Works, Legal Services, Risk Management, Tourism and Culture, Planning and Parking staff were consulted in the preparation of this Report, as was the Alcohol and Gaming Commission of Ontario.

Staff attended the May 10, 2016 meeting of the Hamilton Business Improvement Area Advisory Committee to inform them of the pilot. While the BIA representatives in attendance were generally supportive of the pilot, full consultation with all BIA's has not been undertaken.

On May 26, 2016, staff convened a meeting to solicit further input from BIA's. The five BIA representatives in attendance reaffirmed their support for the pilot (see Appendix "C"), but there were concerns about the requirement of providing \$5 M Commercial General Liability Insurance. Also, some BIA representatives pointed out the differences between Merchant Areas and BIA's and suggested that only BIA's should be allowed to participate in the pilot (see Appendix "C").

Any further comments / concerns received about the pilot after the finalization of Report PED16119, will be verbally reported when Report PED16119 is presented to the General Issues Committee.

ANALYSIS AND RATIONALE FOR RECOMMENDATION

In recent years, many North American cities, including some Canadian municipalities, have established guidelines to promote the utilization of public spaces for festivals, events, etc., including the use of on-street parking spaces for such things as temporary parks or patios associated with adjacent cafés and restaurants.

In developing the recommended On-Street Patio Pilot Program, consultation with all affected City Departments / staff was undertaken, and the approaches / guidelines of other municipalities were considered.

To ensure that public safety is maintained, applications for On-Street Patios would be reviewed through the City's current Road Occupancy Permit (as modified). The

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following is a summary of the recommended criteria / guidelines under which On-Street Patios would be permitted during the 2016 pilot:

- Patios, for the purposes of this pilot project would generally mean passive seating areas and spaces which may include landscaping materials for beautification of the space;
- Written endorsement by the affected BIA is required in a form satisfactory to the City;
- On-Street Patios shall be permitted only in legal on-street parking areas (i.e. metered parking spaces, time limited parking spaces, or unrestricted parking spaces) and will not be allowed in areas where parking / stopping is prohibited for traffic movement / public safety (i.e. in through traffic lanes, rush hour routes, bike lanes, accessible parking stalls or posted loading areas etc.);
- Amplified music, live music, or commercial entertainment is not permitted, nor is the consumption of alcohol;
- Applicable zoning requirements must be met;
- An applicant must provide proof of Commercial General Liability Insurance (\$5 M) coverage endorsed to include the City as additional insured;
- The On-Street Patio shall comply with all requirements of *Accessibility for Ontarians with Disabilities Act, 2005* (AODA); and,
- The On-Street Patio shall have no electrical wiring (overhead or surface) from the principal building.

In some instances an applicant for a temporary On-Street Patio could be a BIA identifying the space for the benefit of all customers / visitors to the BIA. Alternatively, an individual business owner in a BIA or Merchant Association may apply for a patio for exclusive use with the affected BIA's written endorsement.

All outdoor commercial patios in the City of Hamilton are subject to review under the minor site plan control process. However, since consumption of alcohol is not being recommended for the pilot program staff proposes a streamlined process, which will allow for the review of the On-Street Patio layout under a Road Occupancy Permit as opposed to an Outdoor Patio Café Encroachment Agreement and Minor Site Plan Application. The consumption of alcohol will be considered as part of any future permanent On-Street Patio Program.

The April 27, 2016 motion from Council also requested that the On-Street Patios and seating areas have music or live entertainment. Both Planning and Municipal Law Enforcement are currently reviewing the issue of music or live entertainment on patios and will be reporting back to Council later this year. Therefore, staff recommends that a decision on music or live entertainment on street patios await the outcome of this discussion and be considered as part of the permanent On-Street Patio Program.

Staff has concerns about allowing the pilot to expand beyond BIA's because Merchant Associations do not have a formal organizational structure associated with them, which

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could be problematic in assessing where a proposed patio might be established or supported. In any event, as per Council direction staff proposes that temporary On-Street Patios be limited to a maximum of 30 locations in the following areas:

- A maximum of two per Business Improvement area;
- A maximum of two for a maximum of two for the Kenilworth Merchant Association (from Main Street East to Barton Street East); and,
- A maximum of two for the James Street North Merchant Association (from York Boulevard to Murray Street).

Based on comments received, staff anticipates that there may be a large number of applications to participate in the pilot. Other Cities have handled demand by scoping submissions through a review panel. However, given the time constraints to implement a 2016 pilot, staff propose conducting a lottery process in cases where applications exceed two per BIA / Merchant Association. Staff propose that the last day of patio applications will be July 13, 2016. After the July 13, 2016 deadline, applications will still be accepted on a first come first served basis if all the patios are not taken through the lottery.

While the recommended pilot has been vetted by all affected staff / Divisions, time did not allow for full, comprehensive public consultation to take place. There are unanswered questions at this point, and staff is hoping that the pilot will identify any concerns which might need to be addressed as part of a future permanent On-Street Patio Program.

Staff recommend that an assessment be undertaken once the pilot expires, and that staff be directed to report back to Committee in Q1 2017 with a formal assessment as well as with recommendations for a permanent On-Street Patio Program for 2017.

As part of assessing the pilot, staff would propose consultation with the affected Business Improvement Areas, Merchant Associations and Ward Councillors. The performance assessment would include, but not be limited to evaluating such things as:

- Effects to on-street parking availability;
- Complaints received;
- Selection processes;
- Business uptake and sales;
- Fees and costs;
- Potential for expansion in other areas of the City;
- Potential for permitting the serving and consumption of alcohol, and / or live music and entertainment;
- Applicant interviews;
- Public realm improvement; and,
- Scoped surveys.

ALTERNATIVES FOR CONSIDERATION

The number and areas in which the patios are being recommended (i.e. BIA's and Kenilworth and James Merchant Associations) could be reduced or expanded and certain terms of the recommended pilot could be revised. However, careful consideration would be needed in terms of staff's ability to manage the pilot program, and adherence to the legal/requirements including insurance requirements.

ALIGNMENT TO THE 2012 – 2015 STRATEGIC PLAN

Strategic Priority #1

A Prosperous & Healthy Community

WE enhance our image, economy and well-being by demonstrating that Hamilton is a great place to live, work, play and learn.

Strategic Objective

- 1.3 Promote economic opportunities with a focus on Hamilton's downtown core, all downtown areas and waterfronts.
- 1.5 Support the development and implementation of neighbourhood and City wide strategies that will improve the health and well-being of residents.

APPENDICES AND SCHEDULES ATTACHED

Appendix "A" - Criteria List and Guidelines for On-Street Patio Pilot Program

Appendix "B" - Request Form for Use of On-Street Patio Pilot Program

Appendix "C" - Comments from BIA's for On-Street Patio Pilot Program

JM/dt