



CITY OF HAMILTON
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Parking and By-law Services Division
and
Planning Division

TO:	Chair and Members Planning Committee
COMMITTEE DATE:	July 5, 2016
SUBJECT/REPORT NO:	Outdoor Entertainment on Restaurant / Bar Patios (PED16155) (City Wide)
WARD(S) AFFECTED:	City Wide
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SUBMITTED BY:	Jason Thorne General Manager Planning and Economic Development Department
SIGNATURE:	

RECOMMENDATION

That Planning Division staff be directed to hold a statutory Public Meeting in October 2016 for the purposes of hearing public submissions on potential changes to the Zoning By-law, identified in Appendix “A” to Report PED16155, respecting live and recorded music and dance facilities on outdoor commercial patios.

EXECUTIVE SUMMARY

At its meeting of April 8, 2015, Council directed staff to investigate and report to the Planning Committee on how other major cities address outdoor entertainment on restaurant / bar patios in waterfront areas with adjacent residential neighbourhoods and on possible alternatives for permitting such outdoor entertainment.

The City’s Zoning By-Laws prohibit entertainment or recreational activity, including live or recorded music or dance facilities on commercial patios, (defined as “any outdoor area used in conjunction with an establishment licensed under the Liquor Licence Act, where meals or refreshments are served to the public for consumption on the premises”). The restriction only applies to outdoor patios such as bars, clubs, night clubs and restaurants, licensed under the Liquor Licence Act. Unlicensed patios are permitted under the Zoning By-laws to have live or recorded music, and are currently limited by the City’s Noise Control By-law.

In response to the Council direction, Municipal Law Enforcement (MLE) staff undertook a review of the current restrictions on outdoor entertainment on commercial patios, and best practices in comparable jurisdictions, to determine if the Noise By-law would be

able to provide sufficient controls to address noise on outdoor patios. Concurrently, Planning staff reviewed the restrictions from a planning perspective to the best practices in comparable jurisdictions. A statutory public meeting will be scheduled for October, 2016 to present the zoning options, receive public feedback and provide advice on an option going forward.

Alternatives for Consideration – Page 5

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial / Staffing / Legal: N/A

HISTORICAL BACKGROUND

In approving General Issues Committee Report 15-008, City Council, on April 8, 2015 approved the following:

“That staff be directed to investigate and report to the Planning Committee on how other major cities address outdoor entertainment on restaurant / bar patios in waterfront areas with adjacent residential neighbourhoods and on possible alternatives for permitting such outdoor entertainment.”

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

Urban Hamilton Official Plan (UHOP)

Outdoor patios are not identified as a use in the Urban Hamilton Official Plan (UHOP). Under Volume 1 of the UHOP, the policy for development and redevelopment of local commercial uses (E.3.8.9 Design), in part, provides that local commercial uses be compatible with the surrounding area in terms of noise impact.

Zoning By-laws

The City’s seven Zoning By-Laws define an Outdoor Patio as an establishment licensed under the Liquor Licence Act, and contain a provision to prohibit outdoor commercial entertainment from the licensed Outdoor Patio. These zoning provisions have been in existence since 1986, and harmonized in 2009 with the other by-laws, to ensure that accessory outdoor patios to commercial establishments are compatible with surrounding land uses. Although noise is not identified in relation to these provisions, it indirectly implies that noise from outdoor entertainment is disruptive to living environments. The current process to approve outdoor entertainment in the City of Hamilton is by site specific zoning, minor variance, or temporary use by-law. Two minor variances were recently granted to permit pre-recorded music and televisions on commercial patios.

Noise Control By-law

The general provision of the City of Hamilton Noise Control By-law creates an offence that prohibits noise that is likely to disturb the inhabitants of the City. The Noise Control By-law then continues to list specific noise from various sources (common community noises) that are declared “likely to disturb”. This presumption of fact deems, in part, that a radio, amplifier, speaker or other similar device that is clearly audible at a point of reception is considered to be unreasonable noise. In relation to outdoor patios permitted under the Zoning By-law (e.g. not licensed under the Alcohol & Gaming Commission of Ontario (AGCO) or approved through site specific zoning) the Noise Control By-law has been effective to limit amplified sounds, or similar outdoor noises likely to disturb the public.

The Noise Control By-law also allows for the issuance of a temporary noise exemption permit, with conditions, provided that no other by-laws are contravened. This provision is intended only for Special Events (single occasions) and construction projects on City owned property. Given the current prohibition under the City’s Zoning By-laws, noise exemption permits are not available for outdoor commercial patios.

Other Applicable Law

In granting / approving licences, the AGCO has placed controls to restrict or prohibit noise from outdoor patios where significant sounds are audible to the nearby community. Ont. Reg. 719 / 90 of the Liquor Licence Act regulates noise where license holders may not permit noise from entertainment or from the sale and service of liquor to disturb nearby residents. AGCO records identify 265 establishments in the City of Hamilton having licensed outdoor patios that are subject to this restriction (see Appendix “B”, Outdoor Commercial Patios Licensed under AGCO to Report PED16155).

RELEVANT CONSULTATION

Preliminary discussions were conducted with staff from Municipal Law Enforcement, Planning and Legal Services.

Staff also surveyed and consulted with the following municipalities to analyse the best practices in other jurisdictions:

- Vaughan
- Toronto
- Ottawa
- Mississauga
- Niagara
- London
- Burlington
- Oakville
- St. Catharines
- Guelph
- Kitchener
- Waterloo
- Markham
- Ajax
- Kingston

Attached, as Appendix “C” – Entertainment / Noise on Outdoor Commercial Patios Survey, to Report PED16155 are the details of the said consultation and survey.

ANALYSIS AND RATIONALE FOR RECOMMENDATION

Best Practices from Other Municipalities

Staff initially conducted a survey of Municipalities to understand how noise from patios was addressed in municipalities with waterfronts. The survey was sent to 23 municipalities; 15 responses were received (Barrie, Guelph, Burlington, Brampton, Durham, Halifax, London, Mississauga, Muskoka, Peel, St. John's NFLD, Sudbury, Toronto, Waterloo and Winnipeg).

Staff broadened the parameters of the research to include all outdoor patios and expanded the survey to the 15 municipalities identified in Appendix "C" to Report PED16155. This research included review and discussions of the following studies related to entertainment on outdoor patios (noted in Appendix "C" to Report PED16155):

- City of London, dated March 25, 2014;
- Town of Ajax, dated June 20, 2005; and,
- City of Toronto, dated May 19, 2016.

The fore-mentioned studies / reviews included extensive consultation with the public, stakeholders, and other divisions to collect comments through public meetings, e-mail, resident surveys and consultation with an external acoustical engineer to provide technical expertise on noise limits and measurements.

Generally speaking, the majority of jurisdictions have zoning provision(s) to distance / separate commercial outdoor patios from residential zones (i.e. XX m from a residential area); and may identify or indirectly regulate noise in its zoning provisions. Of the 15 municipalities surveyed, only the cities of Burlington, St. Catharines and Vaughan have comparable zoning provisions to the City of Hamilton that prohibit outdoor entertainment on commercial patios. It should be noted that municipalities with setbacks from residential uses will have fewer outdoor commercial patios permitted regardless if live music is provided.

In cases where prohibited by zoning, the most common mechanism used by other jurisdictions to exempt / allow entertainment on outdoor patios (live or recorded), to remedy a contravention of its zoning by-law, are the zoning provisions (Part V) under the Planning Act. Amendments are generally made to the zoning by-law through applications for a minor variance, site plan approval, site specific re-zoning or temporary use by-law. Each such application requires public meeting or public consultation, but do not necessarily impose the measurable noise level restrictions normally contained in a noise or licensing by-law.

The municipalities surveyed that allow commercial entertainment or outdoor patios use the noise by-law as the preferred method to enforce. Municipal Law Enforcement (MLE) staff analysis of best practices in other comparable jurisdictions concludes that the City of Hamilton Noise Control By-law is sufficient in its present form for achieving that

purpose but could be improved to target outdoor commercial patios if the zoning prohibition is removed.

City of Hamilton Zoning By-laws

The prohibition on outdoor music has been part of the City of Hamilton Zoning By-law No. 6593 since 1986, which was extended in 2009 (By-law 09-210) to harmonize with the other six Zoning By-laws. The intent of the regulation was to ensure that music was contained within the restaurant thereby protecting neighbouring sensitive land uses from noise and other impacts.

Appendix “A” to this report identifies different options to consider for potential changes to the Zoning By-law to address live / recorded music on commercial outdoor patios. The options range from status quo to deleting the regulation in its entirety. Any change to the Zoning By-law requires a public process and can be appealed to the Ontario Municipal Board (OMB). Any change requires a robust planning evaluation to support the change and includes the requirement for a public meeting on the potential changes.

Prior to the preparation and presentation of potential changes to the City’s current Zoning By-laws, Planning staff will require additional time to:

- identify the various impacts (e.g. noise, lighting) on sensitive land uses;
- identify if any music type (amplified or non-amplified) could be permitted;
- review the existing locational criteria in the event that the prohibition is removed;
- identify areas that may be able to have outdoor music without creating negative impacts; and;
- identify whether or not a pilot project (temporary use by-law) is the preferred approach to this issue.

ALTERNATIVES FOR CONSIDERATION

Council may direct Planning staff to choose one of the options and amend the Zoning By-laws immediately.

ALIGNMENT TO THE 2012 – 2015 STRATEGIC PLAN

Strategic Priority #2

Valued & Sustainable Services

WE deliver high quality services that meet citizen needs and expectations, in a cost effective and responsible manner.

Strategic Objective

2.3 Enhance customer service satisfaction.

Strategic Priority #3

Leadership & Governance

WE work together to ensure we are a government that is respectful towards each other and that the community has confidence and trust in.

Strategic Objective

3.4 Enhance opportunities for administrative and operational efficiencies.

APPENDICES AND SCHEDULES ATTACHED

Appendix “A” Outdoor Commercial Patios – Potential Zoning By-law Changes

Appendix “B” A list and site map of outdoor commercial patios licensed under AGCO in the City of Hamilton.

Appendix “C” Survey results of zoning and noise by-laws in comparable municipalities for outdoor commercial patios.