



**CITY OF HAMILTON**  
**PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT**  
**Planning Division**

<b>TO:</b>	Chair and Members Planning Committee
<b>COMMITTEE DATE:</b>	October 17, 2017
<b>SUBJECT/REPORT NO:</b>	Proposed Commercial and Mixed Use Zones. Implementing Urban Hamilton Official Plan Amendment and Zoning By-law Amendment (Wards 1 – 13 and 15) (PED16100(c))
<b>WARD(S) AFFECTED:</b>	Wards 1 – 13 and 15
<b>PREPARED BY:</b>	Timothy Lee 905-546-2424 Ext. 1249
<b>SUBMITTED BY:</b>	Steve Robichaud Director, Planning and Chief Planner Planning and Economic Development Department
<b>SIGNATURE:</b>	

**RECOMMENDATION**

- (a) That Report PED16100(b), respecting the Proposed Commercial and Mixed Use Zones - Implementing Urban Hamilton Official Plan Amendment and Zoning By-law Amendment, be received.
- (b) That the Urban Official Plan Amendment (UHOPA) No. XX to the Urban Hamilton Official Plan (UHOP-Volumes 1 to 3) to include new policies and amend existing policies, schedules, and maps for the implementation of the new Commercial and Mixed Use Zones, be **APPROVED** on the following basis:
  - (i) That the Draft Official Plan Amendment, attached as Appendix “A” to Report PED16100(c), be adopted by Council;
  - (ii) That the proposed Official Plan Amendment is consistent with the Provincial Policy Statement (PPS) 2014 and conforms to the Growth Plan for the Greater Golden Horseshoe, 2017 (P2G);
- (c) That City Initiative CI-16-D – Proposed Commercial and Mixed Use Zoning to add nine new zones to Zoning By-law No. 05-200, to add special exceptions, holding provisions and special figures, to add and amend definitions and parking requirements associated with the new Commercial and Mixed Use (CMU) Zones, a new Utility Zone, and to amend general provisions and other administrative

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sections of the By-law to implement the new CMU Zones, be **APPROVED** on the following basis:

- (i) That the Draft By-law, attached as Appendices “B” (Zoning By-law Text) and “B-1” (Zoning By-law Maps) to Report PED16100(c), which have been prepared in a form satisfactory to the City Solicitor, be enacted by Council;
  - (ii) That the proposed changes in zoning will be in conformity with the Urban Hamilton Official Plan (UHOP) upon approval of Official Plan Amendment (OPA) No.\_\_\_\_;
  - (iii) That the proposed Official Plan Amendment is consistent with the Provincial Policy Statement (PPS) 2014 and conforms to the Growth Plan for the Greater Golden Horseshoe, 2017 (P2G);
  - (iv) That in accordance with Subsection 34(17) of the *Planning Act*, no additional public meeting notice is required;
- (d) That **APPROVAL** be given to the proposed Temporary Use By-laws, expiring May 2019, to allow for commercial entertainment/recreation, including live or recorded music and dance facilities on Outdoor Commercial Patios for two pilot project areas, those being Downtown Dundas and parts of Upper James Street (Stone Church to Rymal Road), identified in Appendices “C” and “C-1”, on the following basis:
- (i) That Draft Temporary Use By-laws, attached as Appendices “C” and “C-1” to Report PED16100(c) for the two pilot project areas, be enacted by City Council;
- (e) That upon finalization of the amendment to the Urban Hamilton Official Plan and the City of Hamilton Zoning By-law No. 05-200, that the following Neighbourhood Plans be amended to redesignate the following subject lands as follows:
- (i) Hamilton Beach Neighbourhood Plan be amended by changing the designation of 1151 Beach Road from “Tourist Commercial” to “Canal Recreation”;
  - (ii) Barnsdale Neighbourhood Plan be amended by changing the designation of 389 Rymal Road East from “Commercial” to “Medium Density Apartments”;

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- (iii) Kirkendall North Neighbourhood Plan be amended by changing the designation of 142 Charlton Avenue West from “Single and Double” to “Commercial”.

**NOTE: Due to the bulk of the text and mapping associated with this initiative, Appendices “B” (Zoning By-law Amendment text) and “B-1” (mapping) have not been included as part of this staff Report PED16100(c). Appendices “B” and “B-1” are available for viewing in the Office of the City Clerk, City Hall, 71 Main Street West (City Hall), 1<sup>st</sup> Floor, or the Planning Division, City Hall, 4<sup>th</sup> Floor, or on-line at [www.hamilton.ca/cmuzoning](http://www.hamilton.ca/cmuzoning).**

**The Report and all Appendices are available on the City’s Website at [www.hamilton.ca/cmuzoning](http://www.hamilton.ca/cmuzoning).**

## **EXECUTIVE SUMMARY**

This Report is a follow up to Report PED16100(b) - City of Hamilton Comprehensive By-law: Proposed Commercial and Mixed Use Zones. The June 6, 2017 Report was referred back to staff for further review of public submissions received at its Statutory Public Meeting of the Planning Committee.

The purpose of this Report is to:

- Report back on the written submissions received after PED16100(b) attached as Appendix “H” to Report PED16100(c) was finalized and released, as well as the public submissions that were received at or after Planning Committee on June 6, 2017; and,
- Make any necessary changes to the parent documents of the UHOP and Zoning By-law No. 05-200:
  - to address the submissions received;
  - to correct errors and/or reverse/clarify the proposed zoning regulations that have been identified; and,
  - to incorporate the results of any previous development applications for commercial and mixed uses that have received final and binding approval between March 1, 2017 and September 1, 2017.

## **Alternatives for Consideration – See Page 16**

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## **FINANCIAL – STAFFING – LEGAL IMPLICATIONS**

Financial: None

Staffing: None

Legal: The Statutory Public Meeting was held June 6, 2017 and the Public Meeting was closed.

## **HISTORICAL BACKGROUND**

On June 6, 2017, the Statutory Public Meeting of the Planning Committee was held to consider both the proposed OPA to the Urban Hamilton Official Plan and the Commercial Mixed Use Zoning (CMU) implementing By-law. At the Statutory Public Meeting:

- there were several written and oral submissions that were received prior to and during the June 6, 2017 Planning Committee. At the Statutory Public Meeting, Committee heard delegates voicing concerns with respect to the proposed CMU Zones. Committee subsequently closed the Public Meeting and tabled the decision pending staff reporting back on matters that were raised at the meeting and subsequently through meetings with landowners and submissions made to staff;
- staff brought forward a series of OPA and Zoning By-laws as part of the motions approved during the June 6, 2017 Planning Committee (see the Motions section of the report for greater detail). The OPA and Zoning By-laws were approved by Council on July 14, 2017; and,
- staff have engaged with delegates and individual landowners who have either appeared before the June 6, 2017 Planning Committee, or have followed up with staff after the Statutory Public Meeting. Concerns raised have been summarized in Appendices “F” to “H” including, where appropriate, changes to the UHOP and the Zoning By-law regulations and/or mapping.

This Report is a follow up to Report PED16100(b).

## **POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS**

### **Provincial Policy**

After Report PED16100(b) was prepared, the Province introduced the updated Growth Plan for the Greater Golden Horseshoe. Staff have reviewed the Growth Plan policies and are satisfied the proposed CMU Zones conforms to the Growth Plan (2017).

More specifically, the CMU Zones:

- support complete communities by providing a mix of land uses, including residential which are in proximity to commercial areas, services and public service facilities (Policy 2.2.1.4 a);
- contribute to transit supportive densities as well as a mix and range of land uses in close proximity to higher order transit (Policy 2.4.10);
- contribute to complete communities by ensuring the development of compact built form for new development in the designated greenfield areas.

As a result of the public input, additional changes to the UHOP are required. These changes are described in Section 4.0 – Property Specific Changes in the Analysis and Rationale for Recommendation Section of this Report.

### **Urban Hamilton Official Plan (UHOP)**

As part of Report PED16100(b), staff advised that the proposed Commercial and Mixed Use Zones implement the policies and designations of the UHOP. Three additional text and mapping changes have been made to the proposed OPA. These additional changes are identified under the Analysis and Rationale for Recommendation Section of this Report. In addition, some corrections have been made to the structure of the OPA but the intent has not been changed.

### **Zoning By-law 05-200**

As the City of Hamilton's Comprehensive Zoning By-law No. 05-200 is being implemented in stages, the next phase being brought forward to be incorporated into Zoning By-law No. 05-200 is the new Commercial and Mixed Use Zones.

The amending By-law includes: eight proposed Commercial and Mixed Use Zones, one proposed Utility Zone to recognize existing parking lots in the city, and associated definitions; general provisions; parking provisions; special exceptions; holding

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provisions; temporary use provisions; special figures; and, administrative edits as well as associated zoning maps. However, due to the size of the amending By-law and the associated maps, they are included as a separate item to this Report and are identified as Appendices “B” and “B-1” to Report PED16100(c).

## **RELEVANT CONSULTATION**

Staff have met with the agents and/or landowners who made written submissions at the June 6, 2017 Planning Committee and staff have since responded to the submissions received. A summary of all the submissions received and subsequent responses to the requests are found in Appendices “F” and “H” of this report. Both administrative changes and requested changes made by the agent and/or landowner are identified and rationale is given for each. A separate series of appendices show the changes that have been requested by the agent and/or landowner but have been rejected, and the rationale for rejecting the request.

## **ANALYSIS AND RATIONALE FOR RECOMMENDATION**

The purpose of this Report is to:

- report back on the written submissions received after PED16100(b) was finalized as well as any public submissions that were received at or after Planning Committee on June 6, 2017; and,
- make any necessary changes to the UHOP and Zoning By-law No. 05-200:
  - to address the submissions received; and,
  - to correct errors that have been identified and incorporate the results of any previous development applications for commercial uses that have received final and binding approval since March 1, 2017.

The key highlights of the new Zones are:

- *easier to understand* in that the zones have been proposed in a more user friendly format than the current zoning by-laws. For example, there is one definition for restaurant instead of take-out, sit down, fast food, lunch counter etc. In addition, yards are based on numbers and not complicated formulas;
- *flexibility* in that the zones allow for a wide range of uses;

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- *consistency* in that the same definitions and regulations will be applied throughout the urban area;
- *avoid duplication of regulations* in that where a regulation is addressed in another by-law or regulation (e.g. Ontario Building Code) it is not repeated in the proposed CMU Zoning By-law; and,
- *address emerging trends* such as microbreweries as a use as well as the arts, culture and entertainment sectors that were not contemplated in the zoning by-laws of the former municipalities.

The new Zones meet many of the strategic goals of the City:

- planning for a prosperous and diverse local economy where people have opportunities to grow and develop;
- encouraging buildings and private and public spaces that create a dynamic City; and,
- providing opportunities for vibrant place for arts, culture, and heritage.

The CMU Zones also implement many city building goals, including:

- supporting commercial areas to serve the residents and businesses within the immediate neighbourhoods, adjacent neighbourhoods, city wide and neighbouring municipalities;
- allowing for intensification of residential and other uses in nodes and corridors;
- providing economic diversity and employment opportunities in many areas of the City; and,
- implementing strong urban design measures such as built form, building placement, and landscaping.

## **1.0 Summary of Key Issues arising from the Additional Public Input**

Staff met with several property owners to discuss their concerns and to provide clarification. Summarized below are key issues that have arisen. Appendices “E” and “F” identify comments received by Ward, by property, and if any action is required.

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### Parking Requirements

- *Increased stall size and timing of Development* – Land owners were concerned that many of their proposed developments were in various stages of Site Plan Approval and/or implementation of phased development. For large land holdings that are undergoing phased development, the new stall size would affect the overall parking layouts. Depending on the timing of the approval process of the Site Plan Control application, or if site specific exceptions to address the stall sizes were previously approved through a Minor Variance Application or Zoning By-law Amendment Application, staff are recommending that a regulation to recognize the current parking stall size dimension be included as a Special Exception.

Furthermore, it is proposed to add a “small car” regulation such that 10% of the parking spaces may be at a smaller size (2.6m x 5.5m) on lots containing 50 or more spaces.

- *Parking Ratios* – Each of the former municipal Zoning By-laws have different parking requirements and exemptions for individual uses. Staff reviewed the parking ratios to determine an appropriate standard based on future trends in parking demand. The previous permissions in the by-laws that permitted redevelopment within the existing buildings, and no additional parking is required, has been carried forward. In addition, an exemption has been applied for certain commercial uses, such as retail with less than 450 square metres where no parking is required. This requirement has been carried over from Hamilton Zoning By-law No. 6593, where this is the only current municipal Zoning By-law that contains this exemption.
- *Landscaped Parking Islands* – The requirement of providing landscaped islands in parking lots is to address climate change, stormwater management, and general aesthetics consistent with Provincial direction and the UHOP. This requirement applies only to parking lots with more than 50 parking spaces. Landowners are concerned this must be provided on all parking lots, thus reducing the opportunity to meet parking requirements. However, there is an opportunity for parking requirement reductions based on the square footage of landscaped islands being provided, such that the effect of this regulation is not to require more land area to be allocated to the parking. Furthermore, this regulation is consistent with the Site Plan Guidelines and UHOP policies regarding the design and layout of large parking areas.

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- *Parking Stall Sizes for Small Cars* – To acknowledge the presence of smaller sized motor vehicles, a new regulation has been added to allow up to 10% of all required parking spaces in parking lots over 10 parking spaces to have a reduced parking stall size of 2.6 metres by 5.5 metres. This allows an opportunity to provide smaller parking spaces for smaller vehicles.

### Amenity Area

There was a concern the 20 square metres of amenity area required for each dwelling unit was excessive, especially for smaller units sizes. Staff undertook additional research, and changes have been made to the requirement as follows:

- Amenity Areas are required for residential development that contains 10 or more units. Smaller buildings (i.e. fewer than 10 units) will not be required to provide Amenity Areas to recognize the lack of opportunity to provide amenity space in small residential buildings;
- A sliding scale is proposed for calculating the required amount of Amenity Area for the development. The sliding scale is based on the threshold unit size of less than 50 square metres. Generally, a smaller unit contains one bedroom and has fewer residents living in each unit, compared to a larger unit that may contain multiple bedrooms. As there are fewer residents living in smaller units, the amount of Amenity Area demanded on a per unit basis is less. For dwelling units smaller than 50 square metres, the Minimum Amenity Area requirement is 4.0 square metres per unit. For dwelling units larger than 50 square metres, the Minimum Amenity Area requirement is 6.0 square metres per unit. Amenity Areas can include both indoor and outdoor spaces and facilities such as playgrounds, party rooms, rooftop gardens and patios, fitness centres, lounging areas, and other communal spaces;
- Outdoor Amenity Areas must be unobstructed by buildings, and must be exposed to air and light, thus requiring the space to be useable. For example, portions of lands that may be landscaped but not useable, such as underneath balconies, would not be included in the calculation of required Amenity Areas; and,
- Planting Strips (i.e. required Planting Strips between the parking lot and the street line) are excluded from being considered as part of the Amenity Area to prevent “double dipping” of providing landscaping as part of a buffering and streetscape requirement, and also counting as an Amenity Area. The role of the required Planting Strips is for landscape buffering only and the intent is not to be used as part of an Amenity Area.

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Regulation Requiring 40% of the Frontage Along the Street to Contain a Building

This regulation applies to certain zones such as the Community Commercial (C3) Zone, Mixed Use Medium (C5) Zone, and the District Commercial (C6) Zone. Landowners expressed concern this regulation cannot be met without a complete redevelopment of the property.

It was determined through additional research that existing plazas can only achieve 10% to 30% of the frontage along the street line that contains a building. Staff also investigated the size of the existing and proposed buildings pads and they range in size from 260 square metres for restaurants up to 2,190 square metres for multi-tenant commercial pads, but are typically in the range of 260 square metres to 850 square metres. Therefore, staff have included an exemption from this regulation for undeveloped free-standing buildings, up to a maximum size of 650 square metres per building. Multiple small buildings will be permitted to strengthen the street edge. In addition, access driveways and lands within a required yard setback (i.e. side and rear) have been removed from the calculation.

Building Height for Rooftop Amenity Area

Where the proposed by-law regulations require the provision of a Minimum Amenity Area, this can be provided on the roof. In recent years this has been a trend to provide additional amenity area for residents, and also assists in climate change and the heat island effect. A regulation has been revised to permit additional vertical distance on top of the maximum building height as a result of the stairwell that provides access to the rooftop amenity area, and any portions of the amenity area, such as a gazebo, that adds additional vertical distance to the building. The regulation only permits Rooftop Amenity Area equivalent of up to 10% of the floor area directly beneath the roof.

Permitting Limited Additions and Expansions to Legal Non-conforming Single and Duplex Dwelling Units

When a use and/or building becomes legal non-conforming as a result of Zoning By-law amendments, any changes to the use or building (additions and accessory structures) requires the land owner to seek a variance through 45(2) of the *Planning Act*.

In some areas, where CMU zoning is to be applied, historic uses such as single detached and duplex dwellings become legal non-forming uses. They may continue to exist there in perpetuity but they cannot expand their building or add an accessory structure. In recognition, these two uses will exist prior to the redevelopment of sites and that some minor changes to the buildings should be permitted without the need to go through the variance process. Sections 34 (9) and (10) of the *Planning Act* allow the

City to establish criteria for expansions to legal non-conforming buildings/uses and the addition of accessory structures.

The addition of a clause is suggested for the C2, C5 and C5a Zones non-conforming section of the by-law to allow for the expansion (in volume or size) of the single detached or duplex dwellings legally existing at the date of the passing of the by-law of up to 10% of the gross floor area. The expansion would be exempted from the minimum height provisions, and minimum front yard setback. However, the building would have to maintain the existing side yard setbacks.

In addition, new clauses would be added to Section 1.11 Legal Non-Conforming uses to allow porch, deck, balcony, unclosed fire escape or open stair, swimming pool, hot tub and an accessory building, including but not limited to a shed, or garage, provided it meets the requirements of the applicable Zoning By-law regulations.

## **2.0 Additional Changes to UHOP**

As a result of reviewing public submissions and delegates at the Planning Committee on June 6, 2017, the following additional amendments have been included in the proposed OPA:

- correcting the limits of the Pedestrian Focus Street in the Barton Street and Kenilworth area;
- deleting the Area specific policy in the western end of Dundas because it was included in error; and,
- correcting references to street directions (e.g. north, east, etc.).

In addition, to permit a minor expansion in volume and size to legal non-conforming single and duplex dwellings, a new clause has to be added to the UHOP to recognize situations where uses are legal non-forming to the Zoning By-law. A similar clause exists currently for uses that do not comply with the UHOP.

## **3.0 Changes to Zoning By-law 05-200 (General text)**

Amendments to Zoning By-law No. 05-200 are required to provide updates and revisions to regulations as a result of the CMU project. The proposed amendments are the result of further review of the proposed zones and meetings with concerned landowners and applicants. A list of the changes can be found in Appendix “D” of this Report.

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**4.0 Property Specific Changes (Text and/or Mapping to UHOP and Zoning By-law No. 05-200)**

Appendices “F” and “G” contain a detailed description of the public comments as well as any action for change. There were 87 requests for changes to the UHOP and/or Zoning By-law. Of these 87 requests, 44 changes have been made and many of the requests have been addressed through additional information provided by the landowner and/or re-review of the proposed regulations.

**5.0 Planning Committee/Council Directions (Motions)**

Several motions were passed by Planning Committee/City Council in June 2017 as part of the CMU Zoning Project. The following Motions have been enacted through OPAs and Zoning By-law amendments prior to this Report, and were adopted by Council on July 14, 2017:

1. Barton Street East from Centennial Parkway North to the Red Hill Valley Parkway, and Nash Road North from Barton Street North to Bancroft Street - Ward 5;
2. 1800 Upper James Street (in part) - Ward 11;
3. 360 – 410 Lewis Road – Ward 11;
4. 2411 Upper James – Ward 11; and,
5. 2400 Highway 56 (westerly portion) – Ward 11 (OPA only).

The following motions (see Appendix “D”) have been incorporated into the proposed OPA and/or Zoning By-law Amendments attached as Appendices “A”, “B”, and “B-1”.

1. 2400 Highway 56 (Armstrong Pet and Garden Centre) – Ward 11;
2. 37-39 Cliff Avenue – Ward 7; and,
3. 651 and 655 Upper James Street – Ward 7.

Currently there is one appeal for lands at Barton Street East from Centennial Parkway North to the Red Hill Valley Parkway (2371 Barton Street East) on the basis that the ranges of commercial uses expand to include retail, in addition to the food store use as approved in the Zoning By-law.

## **6.0 Areas left out of CMU Zoning By-law**

### **6.1 Secondary Plan and Other Study Areas**

Certain areas have been left out of the CMU Zoning either due to the an existing Secondary Planning process (i.e. Downtown Hamilton and Centennial Neighbourhoods) or the Secondary Plan has not been resolved at the OMB (i.e. Fruitland – Winona Secondary Plan). These areas were identified previously at the June 6, 2017 Planning Committee meeting.

The lands not included in the proposed the CMU OPA and Zoning By-law Amendments are identified below.

- Downtown Hamilton Secondary Plan;
- Centennial Neighbourhoods Secondary Plan;
- Fruitland – Winona Secondary Plan; and,
- West Harbour Secondary Plan.

The Queenston Road area, west of Parkdale to the Redhill Valley Expressway was originally included in the proposed CMU Zoning but has been excluded from this By-law and will be brought forward with the Centennial Neighbourhoods Secondary Plan.

Staff will be bringing forward implementing zoning by-law amendments with both the Downtown Secondary Plan and the Centennial Node Secondary Plan to ensure there is alignment between the land use plan and zoning by-law to facilitate intensification, redevelopment and reduce regulatory barriers for small businesses.

### **6.2 Development Applications**

Certain lands have been left out of the CMU Zoning due to existing planning applications. Lands that are currently undergoing a planning application process would be addressed as a housekeeping amendment at a future stage. The table below shows the lands that have been added to the list of properties to be removed in addition to the lands identified under PED16100(b).

<b>Address</b>	<b>Rationale</b>
Rymal Road and Upper Sherman Avenue (Ward 7)	These lands are currently subject to a Site Plan Application and will be final approved in 4 <sup>th</sup> quarter 2017.

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<b>Address</b>	<b>Rationale</b>
211 York Road (Ward 13)	Lands currently subject to a Zoning By-law Amendment Application to change the zone to Community Institutional (I2) Zone in the Hamilton Zoning By-law No. 05-200.
446, 460, 470, and 488 Dundas Street East and 10 Mallard Trail (Ward 15)	These lands are currently subject to a Site Plan Application (DA-17-106) and has recently been conditionally approved. Currently the applicant is satisfying conditions.
Portions of 526 and 530 Dundas Street East (Ward 15)	<p>These lands, in addition to 446, 460, 470, and 488 Dundas Street East and 10 Mallard Trail, are currently subject to By-law 14-099 as approved by the Ontario Municipal Board (PL061186). This By-law regulates use, setbacks, and maximum Gross Floor Area.</p> <p>As the regulations respecting Gross Floor Area involves multiple properties, removing in its entirety prevents the interpretation of By-law 14-099 and regulations within Hamilton Zoning By-law 05-200.</p>

**6.3 Properties subject to the OMB**

Certain lands have also been removed from the CMU Zoning due to planning applications and subsequent appeals to the OMB. The following is a comprehensive list of all properties that are subject to the OMB and therefore are not included in the CMU Zoning.

<b>Address</b>	<b>Rationale</b>
1 Old Ancaster Road (Dundas) (Ward 13)	These lands were approved for residential through an OMB decision in 1995. The decision was never implemented through the Town of Dundas.
165 Upper Centennial (Hamilton) (Ward 9)	Ongoing OMB appeal of an Official Plan Amendment Application and Zoning By-law Amendment Application (PL161115)
2064 – 2070 Rymal Road East, Stoney Creek (Ward 11)	Ongoing OMB appeal of an Official Plan Amendment Application and Zoning By-law Amendment Application (PL160926)
71 Main Street and 10 Baldwin Street, Dundas (Ward 13)	Ongoing OMB appeal of an Official Plan Amendment Application and Zoning By-law Amendment Application (PL160066)
383 Dundas Street East and 4 First Street	Ongoing OMB appeal of an Official Plan Amendment Application and Zoning By-law

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Address	Rationale
	Amendment Application (PL160498)

**7.0 Areas to be changed in the UHOP and/or added to Zoning By-law No. 05-200 as a result of final and binding OPA and or Zoning By-law Changes**

Address	Applications	Rationale
128-134 Wilson Street East (Ward 12)	OPA/ZBA	OPA (U) No. 76 and Zoning By-law Amendment 17-087 are final and binding (June 9, 2017)

**8.0 Transition Issues**

A new section has been added to this proposed CMU By-law to assist with the application of the By-law by staff should the By-law be subject to appeals. Currently, the *Planning Act* provides for a possible retroactive application of an appealed by-law should any appeals be withdrawn or dismissed. Furthermore, it is possible that an appealed by-law could be amended or repealed, in which case those amended or repealed portions are in force as of the date of the decision of the Ontario Municipal Board. However, during the time an appeal is outstanding, any Building Permit Applications made require the Building Division to review the applications against any zoning by-law “made” which includes the new and former zoning by-laws. As a result, this causes dual-compliance issues as well as general confusion for both staff and the public about the interpretation of the by-laws while appeals are outstanding. The intention of Section 12 of the proposed By-law attached as Appendix “B” to Report PED16100(c) is to clarify that until such time as the new Zoning By-law regulation is in force and effect the new by-law is not “made” and does not apply to Building Permit applications.

Once the new CMU Zoning By-law is passed and if it is appealed, any planning application for commercial zoning will include two by-laws: one by-law for existing zoning and one by-law for the CMU Zoning. In this way, if the CMU Zoning comes into effect, the application will comply with the by-law that is in force and effect.

If the By-law comes into effect during the site plan approval process, variances may be required to the CMU Zoning.

## **9.0 Other Matters**

### **9.1 Temporary Use By-law for Outdoor Commercial Patios**

Council, at its meeting of May 10, 2017 passed temporary use by-laws for seven pilot project areas and certain rural properties to allow for commercial entertainment/recreation, including live or recorded music and dance facilities on Outdoor Commercial Patios for a period of 24 months. Two of the by-laws (Dundas and Upper James Street) will be repealed once the new CMU Zoning comes into effect. To ensure the pilot project continues, the Temporary Use By-laws for these areas have been added to Zoning By-law No. 05-200. The Temporary Use By-laws will expire in May 2019 in accordance with the previous Council decision for the pilot project study.

### **9.2 Amendments to Neighbourhood Plans**

Certain Neighbourhood Plans requires amendments to ensure consistency with the CMU Zoning, and to update the corresponding land use maps based on existing land uses or recent planning applications. The recommended amendments are:

- Hamilton Beach Neighbourhood Plan be amended by changing the designation of 1151 Beach Road from “Tourist Commercial” to “Canal Recreation”. This is to recognize the existing park located at the Beach Strip Open Space;
- Barnsdale Neighbourhood Plan be amended by changing the designation of 389 Rymal Road East from “Commercial” to “Medium Density Apartments” to recognize an existing multiple dwelling; and,
- Kirkendall North Neighbourhood Plan be amended by changing the designation of 142 Charlton Avenue West from “Single and Double” to “Commercial” to recognize the existing commercial use on the subject lands.

## **ALTERNATIVES FOR CONSIDERATION**

City Council does not adopt the OPA and the Zoning By-law Amendment. The existing UHOP policies will remain in effect. The former municipal Zoning By-laws of Ancaster, Flamborough, Dundas, Hamilton, Glanbrook, and Stoney Creek will remain in effect. This option is not preferred because the *Planning Act* requires that a municipality pass a comprehensive Zoning By-law to bring zoning into conformity with the Official Plan within three years of the Official Plan coming into effect. The UHOP came into effect in August 2013.

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*OUR Mission: To provide high quality cost conscious public services that contribute to a healthy, safe and prosperous community, in a sustainable manner.*

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## **ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN**

### **Economic Prosperity and Growth**

*Hamilton has a prosperous and diverse local economy where people have opportunities to grow and develop.*

### **Built Environment and Infrastructure**

*Hamilton is supported by state of the art infrastructure, transportation options, buildings and public spaces that create a dynamic City.*

### **Culture and Diversity**

*Hamilton is a thriving, vibrant place for arts, culture, and heritage where diversity and inclusivity are embraced and celebrated.*

## **APPENDICES AND SCHEDULES ATTACHED**

- Appendix “A” Urban Hamilton Official Plan Amendment
- Appendix “A-1” Detailed Review Of Provincial Policy And Urban Hamilton Official Plan
- Appendix “B” Amending Zoning By-law to 05-200 text (Available under separate cover, not attached to this Report)
- Appendix “B-1” Amending Zoning By-law to 05-200 Maps (Available under separate cover, not attached to this Report)
- Appendix “C” Temporary Use By-law Amendment for Dundas and Hamilton (Upper James between Rymal Road and Stone Church Road)
- Appendix “D” List of Corrections, Errors, and Omissions of the Zoning By-law as a result of Administrative Changes or Requests from Landowners
- Appendix “D-1” List of Requested Changes from Landowners but not Approved
- Appendix “E” Planning Committee/Council Directions (Motions)
- Appendix “F” Site Specific List of Corrections, Errors, and Omissions of the Zoning By-law During and Since the June 6, 2017 Planning Committee as a result of Administrative Changes or Requests from Landowners
- Appendix “F-1” List of Site Specific Requested Changes from Landowners but not Approved During and Since the June 6, 2017 Planning Committee

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**SUBJECT: Proposed Commercial and Mixed Use Zones- Implementing Urban Hamilton Official Plan Amendment and Zoning By-law Amendment (Wards 1 – 13 and 15) (PED16100(c)) - Page 18 of 18**

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- Appendix “G” Site Specific List of Corrections, Errors, and Omissions of the Zoning By-law between Completion of the Staff Report and the June 6, 2017 Planning Committee as a result of Administrative Changes or Requests from Landowners
- Appendix “G-1” List of Site Specific Requested Changes from Landowners but not Approved between Completion of the Staff Report and the June 6, 2017 Planning Committee
- Appendix “H” Staff Report from the June 6, 2017 Planning Committee Meeting

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