



CITY OF HAMILTON
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Planning Division

TO:	Chair and Members Planning Committee
COMMITTEE DATE:	April 30, 2019
SUBJECT/REPORT NO:	Entertainment on Outdoor Commercial Patios – Extension and Establishment of the Temporary Use By-laws (PED16155(b)) (City Wide)
WARD AFFECTED:	City Wide
PREPARED BY:	Joanne Hickey-Evans (905) 546-2424 Ext. 1282
SUBMITTED BY:	Steve Robichaud Director, Planning and Chief Planner Planning and Economic Development Department
SIGNATURE:	

RECOMMENDATION

- (a) That approval be given to **City Initiative CI-17-C** to extend Temporary Use By-laws Nos. 17-083, and 17-255, under Zoning By-law No. 05-200 for a period of 36 months, to allow for commercial entertainment/recreation, including live or recorded music and dance facilities on Outdoor Commercial Patios for four urban pilot project areas: Downtown Hamilton, Hess Village, parts of Upper James Street (Stone Church Road to Rymal Road), and Dundas; and some properties within the Rural area on the following basis:
- (i) That the draft Temporary Use By-laws, attached as Appendices “A” and “B” to Report PED16155(b) for the five pilot project areas and the rural area, be approved by City Council; and,
 - (ii) That the draft Temporary Use By-laws are consistent with the Provincial Policy Statement (PPS) 2014, conform to the 2017 Growth Plan for the Greater Golden Horseshoe, and comply with the Rural (RHOP) and Urban Hamilton Official Plans (UHOP).
- (b) That approval be given to **City Initiative CI-17-C** to extend Temporary Use By-laws No. 17-082 under Zoning By-law No. 6593 for a period of 36 months, to allow for commercial entertainment/recreation, including live or recorded music and

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dance facilities on Outdoor Commercial Patios for two urban pilot project areas on James Street North and James Street South, on the following basis:

- (i) That draft Temporary Use By-law, attached as Appendix “C” to Report PED16155(b) for the James Street North and James Street South pilot project areas, be approved by City Council; and,
 - (ii) That the draft Temporary Use By-law is consistent with the Provincial Policy Statement (PPS) 2014, conforms to the 2017 Growth Plan for the Greater Golden Horseshoe and complies with the Urban Hamilton Official Plan (UHOP).
- (c) That approval be given to **City Initiative CI-17-C** to establish a Temporary Use By-law in Zoning By-law No. 05-200 for a period of 36 months, to allow for commercial entertainment/recreation, including live or recorded music and dance facilities on Outdoor Commercial Patios for two urban pilot project areas: James Street North and James Street South / Augusta Street, on the following basis:
- (i) That the Temporary Use By-law, attached as Appendix “D” to Report PED16155(b) for James Street North and James Street South / Augusta Street pilot areas, be approved by City Council; and,
 - (ii) That the draft Temporary Use By-law is consistent with the Provincial Policy Statement (PPS) 2014, conforms to the 2017 Growth Plan for the Greater Golden Horseshoe and complies the Urban Hamilton Official Plan (UHOP).

EXECUTIVE SUMMARY

In May, 2017, City Council approved three Temporary Use By-laws to Zoning By-law Nos. 05-200, 6593 and 3281-86, to allow for commercial entertainment/recreation, including live or recorded music and dance facilities, on Outdoor Commercial Patios for seven pilot project areas (Downtown Hamilton, James Street North, James Street South/Augusta Street, Hess Village, West Harbour area, Downtown Dundas, and Upper James Street (Stone Church to Rymal Road); and some properties (predominantly golf courses) within the Rural area. These By-laws were appealed to the LPAT (formerly the Ontario Municipal Board). The appeals were withdrawn in June, 2018.

The By-laws were established for a period of 24 months. They expire on May 10, 2019.

In November, 2017, a fourth Temporary Use By-law was passed when two of the pilot project areas (Upper James Street and Dundas), that were subject to Zoning By-laws No. 6593 and 3581-86, were removed and included in Zoning By-law No. 05-200.

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This By-law will expire on June 22, 2019.

The purpose of these Amendments is to:

- Extend Temporary Use By-laws Nos. 17-082 (Zoning By-law o. 653 - James Street North and James Street South pilot project areas only), 17-083 (Zoning By-law No. 05-200) and 17-255 (Zoning By-law No. 05-200) for a period of 36 months (May 1, 2022); and,
- Establish a new Temporary Use By-law for the James Street North and James Street South / Augusta Street pilot project areas. These lands have been removed from Zoning By-law No. 6593 and included in Zoning By-law No. 05-200. At the time of the passage of the new Downtown and Commercial and Mixed Use zoning projects, the companion temporary use by-laws were not passed for these lands.

There are no additional pilot project areas permitted as a result of these by-law extensions. The West Harbour area has been removed from By-law No. 17-082 which was a condition of the withdrawal of the appeal.

Alternatives for Consideration – See Page 7

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: N/A

Staffing: N/A

Legal: Subsection 39 of the *Planning Act* allows a municipality to pass Temporary Use By-laws for a three year period with an extension of up to another three years.

These By-laws are passed under Subsection 34 of the *Planning Act* and therefore a public meeting of the Planning Committee is required.

HISTORICAL BACKGROUND

1.0 Zoning By-law Amendments Nos. 17- 082 to 084

On May 10, 2017, City Council approved three Temporary Use By- laws. The purpose of these by-laws is to allow for commercial entertainment/recreation, including live or recorded music and dance facilities on Outdoor Commercial Patios for the following seven urban pilot project areas and the rural area:

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1. Downtown Hamilton;
2. Hess Village;
3. West Harbour area;
4. Downtown Dundas;
5. James Street North;
6. James Street South/Augusta Street;
7. Upper James Street (Stone Church to Rymal Road); and,
8. Some properties (predominantly golf courses) within the Rural area.

The By-laws were established for a period of 24 months. They expire on May 10, 2019.

At the time these Temporary Use By-laws were in effect, there were three Zoning By-laws which had to be amended:

- By-law No. 17-082 (Zoning By-law No. 6593) – applied to James Street North, Augusta/James Street South, West Harbour and Upper James Street;
- By-law No. 17-083 (Zoning By-law No. 05-200) – applied to parts of the Downtown area, Hess Village and the rural area; and,
- By-law 17-084 (Zoning By-law No. 3581-86) – applied to Downtown Dundas.

These three by-laws were appealed to the Ontario Municipal Board by the Harbour West Neighbours (HWN). On June 2, 2018, the HWN withdrew their appeals on the By-laws. There was also an agreement that the HWN would not appeal any extension to the Temporary Use By-laws provided the Waterfront area was removed.

2.0 Zoning By-law Amendment No. 17-255

On November 22, 2017, City Council passed By-law No. 17-255 to include two pilot project areas (Upper James Street and Downtown Dundas) within Zoning By-law No. 05-200. These two areas were previously approved by Zoning By-law No. 17-082 (Schedule A-4) and Zoning By-law No. 17-084 (Dundas). This By-law expires on June 22, 2019.

There were no appeals to this By-law.

3.0 Amendments to the Noise By-law

As part of this pilot project, there were amendments to the Noise Control By-law to require applicants to obtain an outdoor commercial patio exemption permit. To obtain a permit, the applicant must provide:

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- a Certificate of Compliance by a certified acoustic consultant/engineer;
- a detailed Floor Plan showing:
 - (a) surrounding residential areas, properties and dwelling units;
 - (b) a detailed floor plan;
 - (c) position/direction of the noise source;
 - (d) position/direction of hospitals, schools, senior care facilities/residences;
- contact information and undertaking of person(s) supervising the activity; and,
- a \$500 application fee.

In addition, there are conditions imposed on an outdoor commercial patio exemption permit:

- the dates / times be limited from Thursday to Saturday, 11 a.m. – 11 p.m.;
- any resulting noise be restricted to a maximum equivalent sound level (Leq) 60 dBA measured at the permit holder's property line (i.e. conversation in a restaurant, office, background music, air conditioning unit at 30 m);
- the activity/use be in compliance with all City by-laws and other applicable law;
- no sound equipment other than equipment approved under the permit shall be used; and,
- all sound equipment shall be placed and used in accordance with the approved Site Plan and Certificate of Compliance.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

The proposed Temporary Use By-laws and the extension are consistent with the 2014 Provincial Policy Statement, conform to the 2017 Growth Plan and comply with the Urban and Rural Hamilton Official Plans. Report PED16055(a) provides the detailed explanation respecting conformity to Provincial and municipal planning documents.

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RELEVANT CONSULTATION

- Legal Services Division, Corporate Services Department ; and,
- Licensing and By-law Services, Planning and Economic Development Department.

ANALYSIS AND RATIONALE FOR RECOMMENDATION(S)

1.0 Background

Since Temporary Use By-laws have a fixed expiry date, the pilot project could not commence until the appeals were withdrawn. The purpose of the temporary use was to allow staff to evaluate the impact of potential entertainment noise from outdoor patios on adjacent residents. Given the late date for the start of the pilot project (July, 2018), insufficient time was allowed for Noise by-law permit applications and any data could only be collected for the 2018 summer months (approximately three months). No permits have been issued to date.

2.0 Temporary Use By-law Extensions

Based on the Temporary Use By-laws that are in effect, at the time of writing the Report, three by-laws (By-law Nos. 17-082, 17-083 and 17-255) require extensions.

The *Planning Act* allows for a 36 month period extension. After this extension period is over, no further extensions are permitted. Prior to or after the expiration, Staff can choose to complete the review of the pilot project areas and provide options on future permanent zoning changes.

It should be noted that the extension to By-law No. 17-255 requires minor amendments to delete zones in the preamble that do not apply to this particular geographic area and to renumber the temporary use provision.

This By-law only applies to lands that are zoned as Commercial and Mixed Use in Dundas and on Upper James Street. The amendment is to delete the text below and replace it as follows:

“Section 4.20 d) of this By-law shall not apply for a maximum period of 19 months from the date of passing of the Zoning By-law Amendment, being October 25, 2017 for those lands zoned Downtown Central Business District (D1) Zone, Downtown Prime Retail (D2) Zone, Downtown Prime Retail (D2, 451) Zone, Downtown Mixed Use (D3) Zone, Settlement Commercial (S2) Zone, Open Space (P4) Zone, Open Space (P4, 80) Zone, Open Space (P4, 115) Zone, Open Space (P4, 164) Zone, Neighbourhood Commercial (C2) Zone, Mixed Use Medium Density (C5, SE 570) Zone, Mixed Use Medium Density Pedestrian Focus (C5a, SE 570) Zone, Mixed

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Use Medium Density (C5) Zone, Mixed Use Medium Density (C5, SE 318) Zone, and described as:”

Replacement

“Section 4.20 d) of this By-law shall not apply for a period running until May 1, 2022 for those lands zoned Neighbourhood Commercial (C2) Zone, Mixed Use Medium Density (C5) Zone, and Mixed Use Medium Density Pedestrian Focus (C5a) Zone, and described as:”.

The second minor amendment is to renumber the temporary use from T3 to T4.

The By-laws are attached as Appendices “A”, “B” and “C” to Report PED16155(b).

3.0 Adding a new Temporary Use By-law

In November, 2017 and April, 2018, the City passed new zoning Lands identified on Schedule “A2” of By-law 17-082 (lands east of the Downtown and the Downtown area) to remove them from Zoning By-law No. 6593 and include them in Zoning By-law No. 05-200. However, a Temporary Use By-law for these lands was not passed when the zoning was incorporated in Zoning By-law No. 05-200.

This zoning was appealed to the LPAT. Once the Downtown zoning is in effect for the James Street South/Augusta pilot project areas, By-law 17-082, will become inoperative since the lands will no longer be within Zoning By-law No. 6593. Therefore, a new Temporary Use By-law under Zoning By-law No. 05-200 must be passed so these lands can retain the temporary use permissions. The By-law is attached as Appendix “D” Report PED16155(b).

ALTERNATIVES FOR CONSIDERATION

Option 1: No extensions to and no additional Temporary Use By-laws are passed.

Option 2: The extension could include an alternative time frame (i.e. 24 months).

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.

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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” - Proposed Temporary Use By-law Extension for Zoning By-law No. 05-200 (By-law 17-083)
- Appendix “B” - Proposed Temporary Use By-law Extension for Zoning By-law No. 05-200 (By-law 17-255)
- Appendix “C” - Proposed Temporary Use By-law Extension for Zoning By-law No. 6593 (By-law 17-082)
- Appendix “D” - Proposed Additional Temporary Use By-law for Zoning By-law No. 05-200 (Lands in the James Street South/Augusta area)

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