



CITY OF HAMILTON
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Planning Division

TO:	Chair and Members Planning Committee
COMMITTEE DATE:	August 18, 2020
SUBJECT/REPORT NO:	Temporary Use By-law to Zoning By-law No. 05-200 – Outdoor Commercial Patios (CI-20-F) (PED20135) (City Wide)
WARD(S) 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(S)

- (a) That approval be given to **City Initiative CI-20-F** to establish a Temporary Use By-law for Zoning By-law No. 05-200, effective until December 31, 2020, to grant relief from and provide for additional locational requirements for outdoor commercial patios for Downtown Central Business District (D1) Zone, Downtown Prime Retail Streets (D2) Zone, Downtown Mixed Use (D3) Zone, Neighbourhood Commercial (C2) Zone, Community Commercial (C3) Zone, Mixed Use High Density (C4) Zone, Mixed Use Medium Density (C5) Zone, Mixed Use Medium Density - Pedestrian Focus (C5a) Zone, District Commercial (C6) Zone, Arterial Commercial (C7) Zone, Transit Oriented Corridor Mixed Use Medium Density (TOC1) Zone, Transit Oriented Corridor Local Commercial (TOC2) Zone, and, Transit Oriented Corridor Mixed Use High Density (TOC4) Zones, within the City, on the following basis:
- (i) That Temporary Use By-law, attached as Appendix “A” to Report PED20135, be approved by City Council;
 - (ii) That the draft Temporary Use By-law is consistent with the Provincial Policy Statement (PPS) 2020, conforms to the 2019 A Place to Grow: Growth Plan for the Greater Golden Horseshoe and the Urban Hamilton Official Plan (UHOP).

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EXECUTIVE SUMMARY

On July 7, 2020, City Council passed a motion directing staff to prepare a Temporary Use By-law that would permit outdoor commercial patios in a side or rear yard that abuts a residential lot. Additional requirements have been added to ensure there is a minimum 5 metre setback from the residential zone/lot and there are no obstructions of parking aisles, driveways or fire routes.

This By-law would apply to all the Downtown Commercial, Commercial and Mixed Use and Transit Oriented Corridor Commercial Zones in the urban area, with the exception of the Residential Character (C1) Zone. It would be in effect until December 31, 2020.

Alternatives for Consideration – N/A

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 3-year period with an extension of up to another 3 years.

The Urban Hamilton Official Plan requires that notice of a Public meeting is provided 17 days prior to a Public meeting where changes to a Zoning By-law are contemplated.

HISTORICAL BACKGROUND

1.0 Council Motion - Extension of the Outdoor Patio Program

On July 7, 2020 City Council passed the following motion:

WHEREAS on May 13, 2020, Hamilton became one of the first cities in Canada to temporarily permit outdoor dining on streets, sidewalks, and parking areas on public and private lands through the approval of a motion allowing the creation of temporary “Outdoor Dining Districts” and temporary outdoor patios;

WHEREAS the City’s program has already approved 68 Outdoor Dining Districts and temporary outdoor patios across the City;

WHEREAS the Council direction to permit temporary outdoor patios on private parking lots waived any requirement for site plan review for such locations and waived

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enforcement of any zoning provisions related to parking supply, but still required the temporary outdoor patios to meet all other applicable zoning;

WHEREAS the City's zoning does not permit commercial outdoor patios in side or rear lots abutting residentially zoned properties;

WHEREAS there have been a small number of businesses that have been unable to establish temporary outdoor patios because of the zoning restriction regarding abutting residentially zoned lands;

WHEREAS the City wants to provide for as many businesses as possible to participate in the Outdoor Dining Districts and temporary outdoor patio program, while minimizing any potential adverse impacts on neighbouring residential properties; and,

WHEREAS the COVID-19 pandemic creates an urgent need to support the City's culinary scene;

THEREFORE BE IT RESOLVED:

- (a) That staff be directed to prepare a Temporary Use By-law effective to December 31, 2020 for consideration at a statutory public meeting of the Planning Committee, and give the required notice, for temporary amendments to the Zoning By-law that would allow temporary outdoor commercial patios in side and/or rear yards abutting a residential zone or D5 Zone or D6 Zone on lands zoned as follows:
- (i) Downtown Central Business District (D1) Zone
 - (ii) Downtown Prime Retail Streets (D2) Zone
 - (iii) Downtown Mixed Use (D3) Zone
 - (iv) Downtown Local Commercial (D4) Zone
 - (v) Community Commercial (C2) Zone
 - (vi) Community Commercial (C3) Zone
 - (vii) Mixed Use High Density (C4) Zone
 - (viii) Mixed Use Medium Density (C5) Zone
 - (ix) Mixed Use Medium Density - Pedestrian Focus (C5a) Zone
 - (x) District Commercial (C6) Zone
 - (xi) Arterial Commercial (C7) Zone
 - (xii) Mixed Use (TOC1) Zone
 - (xiii) Local Commercial (TOC2) Zone
 - (xiv) Mixed Use High Density (TOC4) Zone

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Subject to the following conditions:

1. The patio is setback at least 5 metres from any residentially zoned property.
 2. The patio does not obstruct a driveway or parking aisle or fire route.
- (b) That Council direct staff to immediately suspend the enforcement of the zoning by-law provisions prohibiting commercial outdoor patios in side and/or rear yards abutting a residential zone, D5 Zone or D6 Zone, where the conditions listed in (a) above have been met, and that the suspension of enforcement continue until either the temporary use zoning by-law comes into force or until the duration stipulated for the temporary use zoning by-law expires.

2.0 Temporary Use By-laws – Entertainment on Outdoor Commercial Patios

In May 2017, the City passed Temporary Use By-laws and amendments to the Noise By-law to allow for commercial entertainment/recreation, including live or recorded music and dance facilities on Outdoor Commercial Patios, for seven urban pilot project areas and the rural area (see Report PED16155(a)). These areas include:

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);
8. Some properties (predominantly golf courses) within the Rural area.

These By-laws were appealed to the Ontario Municipal Board. The settlement included the removal of the West Harbour area from the pilot project areas.

In April, 2019, the City further extended these Temporary Use By-laws until May 1, 2022 (see Report PED16155(b)).

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

1.0 Provincial Policy

A Place to Grow: Growth Plan for the Greater Golden Horseshoe (2019) is silent on outdoor commercial patios since these uses are accessory to commercial uses.

2.0 Urban Hamilton Official Plan (UHOP)

Outdoor Commercial Patios are not identified as a use in the 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.

Section F.1.11 contains policies with respect to Temporary Use By-laws. More specifically, the following policies, amongst others, apply:

“F.1.11 Temporary Use By-laws

At times it is in the public interest to permit lands to be used for a particular use on a temporary basis even though it may not conform to the Zoning By-law. The *Planning Act* authorizes a municipality to pass a temporary use by-law, which defines the area and duration of the use.

- 1.11.1 Council may adopt temporary use by-laws provided the use complies with the permitted uses in Section E – Urban Systems and Designations, to permit the temporary use of land, buildings or *structures* for a purpose that is prohibited by the Zoning By-law.
- 1.11.2 A temporary use by-law may allow a use that is temporary in nature. Any new buildings or *structures* associated with the proposed temporary use shall be constructed so that it can be easily removed after the expiry date of the temporary use by-law.
- 1.11.3 The proposed temporary use shall:
 - a) be *compatible* with uses on adjacent and nearby properties;
 - b) have no adverse impact on the traffic, transportation or parking facilities in the area;
- 1.11.4 A temporary use by-law may be permitted for a period of time which shall not exceed three years, except for garden suites which shall not exceed ten years. However, Council may, by By-law, extend such period of time for further periods of time not exceeding three years each, during which the temporary use is authorized.”

Outdoor Commercial Patios are permitted as an accessory use to a restaurant in the Downtown, Neighbourhoods (Local Commercial Uses), Commercial and Mixed Use Designations.

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The Temporary Use By-law conforms to the Urban Hamilton Official Plan.

2.1 City of Hamilton Official Plan - Setting Sail Secondary Plan

The proposed outdoor commercial are also located within the West Harbour area which is subject to the Setting Sail Secondary Plan. On some sites, the current zoning permits restaurants and uses that are legal non-complying to the Secondary Plan. As such, the accessory use of the outdoor commercial patio does not conflict with the Secondary Plan, subject to the proposed Nosie By-law changes being adopted by Council.

3.0 Zoning By-law No. 05-200

Zoning By-law No. 05-200 defines outdoor commercial patios and contains regulations relating to capacity, location and entertainment.

The Zoning By-law provides the following definition:

“Outdoor Commercial Patio: shall mean any outdoor area used in conjunction with any establishment licensed under the Liquor Licence Act, where meals or refreshments are served to the public for consumption on the premises”

The regulations are below.

“4.20 OUTDOOR COMMERCIAL PATIOS

Notwithstanding any provisions of this By-law, every Outdoor Commercial Patio, inclusive of all outdoor areas and portions of the patio that cross property lines such as road allowances, shall comply with the following:

a) Design Requirements

Outdoor Commercial Patios shall be designed and used to accommodate seating of customers.

b) Seating Capacity Requirements

An Outdoor Commercial Patio shall be limited to a seated capacity of a minimum of 1.10 square metres of patio area per person.

c) Location Requirements:

i) Except as provided in Subsection b) (ii) below, no outdoor patio shall be permitted on a lot where any lot line abuts a Residential Zone, Downtown D5 or Downtown D6 Zone or where such lot is

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separated from a Residential Zone, Downtown D5 or Downtown D6 Zone by a laneway; and,

- ii) Where only the rear lot line abuts a Residential Zone, Downtown D5 or Downtown D6 Zone or the lot is separated from the Residential Zone, Downtown D5 or Downtown D6 Zone by a laneway, an outdoor patio shall be permitted in the front yard.”

RELEVANT CONSULTATION

N/A

ANALYSIS AND RATIONALE FOR RECOMMENDATIONS

1. City Council, at its meeting of July 7, 2020, directed staff to prepare a Temporary Use By-law that would allow outdoor commercial patios to be located in the rear or side yard abutting a residential zone. An additional requirement has been added to ensure there is a 5 metre setback between the adjacent residentially zoned lot and the patio. This Temporary Use By-law does not exempt patio owners from the other Zoning By-law regulations respecting seating capacity. It is noted the Downtown Local Commercial (D4) Zone was repealed in 2018 and is therefore, no longer in effect.

2. This Temporary use By-law is:
- a. a separate By-law to the 2019 Temporary Use By-laws that allow entertainment on patios in select locations within the City; and,
 - b. does not exempt patio owners or patrons from the City’s Noise By-laws.

ALTERNATIVES FOR CONSIDERATION

N/A

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.

APPENDICES AND SCHEDULES ATTACHED

Appendix “A” - Proposed Temporary Use By-law for Zoning By-law No. 05-200