



CITY OF HAMILTON
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Planning Division

TO:	Chair and Members Planning Committee
COMMITTEE DATE:	October 6, 2020
SUBJECT/REPORT NO:	Addition and Extension to Temporary Use By-law to Zoning By-law No. 05-200 – Outdoor Commercial Patios Temporary Use By-law to Zoning By-law No. 05-200 for temporary tents (CI-20-F(2)) (PED20135(a)) (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)

That **City Initiative-20-F(2) Outdoor Commercial Patios and Temporary Tents for Commercial and Institutional Uses** to amend and extend the outdoor commercial patio regulations under Zoning By-law No. 05-200, through a Temporary Use by-law, be received; and

- (a) That in order to permit outdoor commercial patios for an extended time period to expire on October 31, 2021, in a side or rear yard that abuts a residential lot for certain commercial lands and to allow entertainment on outdoor commercial patios within the Downtown area, then approval by Council be given to:
 - (i) The extension and addition of the draft Temporary Use By-law, attached as Appendix “A” to Report PED20135(a);
 - (ii) 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).

OUR Vision: To be the best place to raise a child and age successfully.

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

OUR Culture: Collective Ownership, Steadfast Integrity, Courageous Change, Sensational Service, Engaged Empowered Employees.

SUBJECT: Addition and Extension to Temporary Use By-law to Zoning By-law No. 05-200 – Outdoor Commercial Patios Temporary Use By-law to Zoning By-law No. 05-200 for temporary tents (CI-20-F(2)) (PED20135(a)) (City Wide) - Page 2 of 9

- (b) That in order to provide for improved operational flexibility for Outdoor Commercial Patio and Institutional operations, specifically places of worship, hospitals and educational establishments, within certain lands zoned for commercial and institutional uses to erect temporary tents for six consecutive months within the time period to expire on October 31, 2021, then the approval by Council be given to:
- (i) The draft Temporary Use By-law, attached as Appendix “A” to Report PED20135(a);
 - (ii) 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).

EXECUTIVE SUMMARY

On August 21, 2020, City Council passed a Temporary Use By-law (By-law No. 20-181 is in effect until December 31, 2020) that would permit outdoor commercial patios, under certain conditions, in a side or rear yard that abuts a residential lot for certain commercial lands. The Temporary Use By-law also allowed entertainment on outdoor commercial patios within the Downtown area.

The purpose of this Report is to present changes to Zoning By-law No. 05-200 that provide opportunities for physical distancing beyond December 2020 by:

- extending By-law No. 20-181 until October 31, 2021 and adding a new regulation to allow temporary outdoor commercial patios to be located within required parking spaces, attached as Appendix “A” to Report PED20135(a); and,
- establishing another Temporary Use By-law to allow temporary tents for restaurants, places of worship, hospitals and schools for 6 consecutive months whereas the current Zoning By-law No. 05-200 restricts the erection of temporary tents to five consecutive days (these tents are not permitted to be used for human habitation).

Alternatives for Consideration – See Page 8

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: N/A

SUBJECT: Addition and Extension to Temporary Use By-law to Zoning By-law No. 05-200 – Outdoor Commercial Patios Temporary Use By-law to Zoning By-law No. 05-200 for temporary tents (CI-20-F(2)) (PED20135(a)) (City Wide) - Page 3 of 9

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 three 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 Temporary Use By-Law (By-law No. 20-181) – Outdoor Commercial Patios Locational requirements and Outdoor Entertainment

On August 21, 2020, City Council passed a Temporary Use By-law (By-law No. 20-181) that permits outdoor commercial patios, under certain conditions, in a side or rear yard that abuts a residential lot for certain commercial lands. The Temporary Use By-law also allowed entertainment on outdoor commercial patios within the Downtown area. The By-law is in effect until December 31, 2020.

These temporary locational requirements apply to all the Downtown Commercial, Commercial and Mixed Use and Transit Oriented Corridor Zones in the urban area, with the exception of the Residential Character (C1) Zone and the Transit Oriented Corridor Multiple Residential (TOC3) Zone. Entertainment on the outdoor commercial patios is restricted to commercial and mixed use and park/open space lands within the Downtown Secondary Plan area.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

1.0 Provincial Policy

A Place to Grow: Growth Plan for the Greater Golden Horseshoe (2020) and the Provincial Policy Statement 2020 are silent on outdoor commercial patios and temporary tents since these uses are accessory to commercial or institutional uses.

2.0 Urban Hamilton Official Plan (UHOP)

Outdoor Commercial Patios or temporary tents are not identified as a use in the UHOP. Under Volume 1 of the UHOP, the policy for development and redevelopment of local

OUR Vision: To be the best place to raise a child and age successfully.

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

OUR Culture: Collective Ownership, Steadfast Integrity, Courageous Change, Sensational Service, Engaged Empowered Employees.

SUBJECT: Addition and Extension to Temporary Use By-law to Zoning By-law No. 05-200 – Outdoor Commercial Patios Temporary Use By-law to Zoning By-law No. 05-200 for temporary tents (CI-20-F(2)) (PED20135(a)) (City Wide) - Page 4 of 9

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.”

The extension and addition of location regulations in By-law No. 20-181 as well as the proposed Temporary Use By-law for temporary tents conform to the Urban Hamilton Official Plan.

3.0 Zoning By-law No. 05-200

3.1 Outdoor Commercial Patios

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 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

SUBJECT: Addition and Extension to Temporary Use By-law to Zoning By-law No. 05-200 – Outdoor Commercial Patios Temporary Use By-law to Zoning By-law No. 05-200 for temporary tents (CI-20-F(2)) (PED20135(a)) (City Wide) - Page 6 of 9

Residential Zone, Downtown D5 or Downtown D6 Zone by a laneway, an outdoor patio shall be permitted in the front yard.

d) Prohibition of Commercial Entertainment and Recreation:

That portion of a lot on which the outdoor patio is permitted shall not be used for commercial entertainment or commercial recreation including live or recorded music or dance facilities.”

By-law No. 20-181 allowed, on a temporary basis, these patios to be located within a side or rear yard if they are setback a minimum of 5 m from residentially zoned lands; and, do not obstruct a parking aisle, driveway or fire route. This By-law also allowed entertainment on patios for lands within the Downtown Secondary Plan area.

3.2 Temporary Uses

Zoning By-law No. 05-200 contains specific provisions for the erection of tents. Tents over 60 sq m require a Building Permit; therefore, regulations are specified in the Zoning By-law.

4.18 TEMPORARY USES

- d) Temporary tent(s) or stage(s) in a Downtown Zone, Transit Oriented Corridor Zone, Commercial and Mixed Use Zone, or in a Parking (U3) Zone, in accordance with the following provisions:
- i) Shall not be in operation for more than 5 consecutive days;
 - ii) Shall not be subject to any minimum or maximum yard setbacks or parking requirements of the zone;
 - iii) Notwithstanding b) above, minimum setbacks shall apply if abutting a Residential Zone; and,
 - iv) Shall not occupy areas devoted to barrier-free parking space(s) or loading space(s).

Tents that are erected for longer than five days are considered as accessory buildings. Regulations for accessory buildings vary by zone.

SUBJECT: Addition and Extension to Temporary Use By-law to Zoning By-law No. 05-200 – Outdoor Commercial Patios Temporary Use By-law to Zoning By-law No. 05-200 for temporary tents (CI-20-F(2)) (PED20135(a)) (City Wide) - Page 7 of 9

RELEVANT CONSULTATION

N/A

ANALYSIS AND RATIONALE FOR RECOMMENDATIONS

Physical distancing, as a result of COVID-19, is likely to continue into 2021, resulting in continued demand for outdoor dining. Certain temporary amendments to Zoning By-law No. 05-200 can facilitate physical distancing through temporary relaxation of certain regulations, specifically respecting outdoor commercial patios and temporary tents.

1.0 Outdoor Commercial Patios – By-law No. 20-181

On August 21, 2020, City Council passed a Temporary Use By-law that permits outdoor commercial patios, under certain conditions, in a side or rear yard that abuts a residential lot for certain commercial lands. The Temporary Use By-law also allows entertainment on outdoor commercial patios within the Downtown area. The Temporary Use By-law will expire on December 31, 2020.

Should Planning Committee and Council wish to extend these permissions until the end of next summer's patio season, then it is appropriate to extend the By-law to October 31, 2021. The draft Temporary Use By-law is attached as Appendix "A" to Report PED20135(a).

Further, one additional requirement should be added to this Temporary Use By-law to allow patios to be located within required parking spaces. Some patios are set up in parking lots, where the required off street parking for the restaurant is located. Re-purposing these required parking spaces to a temporary patio use could temporarily result in a restaurant no longer meeting its parking requirement, and therefore a temporary relaxation of this parking requirement would be required to facilitate the use. Required parking for restaurants is based on seating capacity (1 parking space for every 8 sq. m). Given the provincial COVID restrictions on the seating capacities within restaurants, only a portion of indoor seating is being used and some of that capacity has been accommodated on patios. Therefore, an interim permission to allow patios within required parking spaces can be supported.

2.0 Noise Complaints from Patios

At the time of writing this report, four noise complaints had been received related to outdoor patios through the summer of 2020.

SUBJECT: Addition and Extension to Temporary Use By-law to Zoning By-law No. 05-200 – Outdoor Commercial Patios Temporary Use By-law to Zoning By-law No. 05-200 for temporary tents (CI-20-F(2)) (PED20135(a)) (City Wide) - Page 8 of 9

3.0 Temporary Tent Regulations

Zoning By-law No. 05-200 allows tents to be erected as a temporary use for a maximum of five consecutive days within certain Downtown, Transit Oriented Corridor, and Commercial and Mixed Use zones, without having to meet the zoning standards that apply to permanent accessory buildings.

Once tents are erected for longer than five days, they are considered permanent fixtures and are subject to the accessory building regulations.

Given that physical distancing is one way to protect against the spread of COVID-19, the use of outdoor tents is one way certain uses / businesses can accommodate larger groups of people by shifting uses outdoors. Such uses as restaurants, schools, places of worship and hospitals could use tents for physical distancing purposes. These tents would not be permitted to be used for human habitation.

Amendments to Zoning By-law No. 05-200 are required to permit these tents to be erected for more than five consecutive days. The draft Temporary Use By-law proposes that this be extended to six consecutive months which would allow for the temporary use of tents through the 2020-2021 winter season. Further, the By-law has been amended to add in uses (places of worship, educational establishments and hospitals) within Institutional Zones.

Should Planning Committee and Council wish to allow restaurants (outdoor commercial patios), places of worship, hospitals and educational establishments within certain lands zoned for commercial and institutional uses to erect temporary tents for six consecutive months and be in effect until October 31, 2021, approval can be given to the draft Temporary Use By-law attached as Appendix “B” to Report PED20135(a).

ALTERNATIVES FOR CONSIDERATION

Council can choose not to pass the proposed extension and addition to the Temporary Use By-law for outdoor commercial patios, and / or Council can choose not to pass a new Temporary Use By-law for the temporary tent regulations.

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.

OUR Vision: To be the best place to raise a child and age successfully.

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

OUR Culture: Collective Ownership, Steadfast Integrity, Courageous Change, Sensational Service, Engaged Empowered Employees.

SUBJECT: Addition and Extension to Temporary Use By-law to Zoning By-law No. 05-200 – Outdoor Commercial Patios Temporary Use By-law to Zoning By-law No. 05-200 for temporary tents (CI-20-F(2)) (PED20135(a)) (City Wide) - Page 9 of 9

APPENDICES AND SCHEDULES ATTACHED

- Appendix “A”: Proposed Extension of and Addition to Temporary Use By-law to Zoning By-law No. 05-200 for outdoor commercial patios (By-law No. 20-181)
- Appendix “B”: Proposed Temporary Use By-law to Zoning By-law No. 05-200 for temporary tent regulations