



CITY OF HAMILTON
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Planning Division

TO:	Chair and Members Planning Committee
COMMITTEE DATE:	April 5, 2022
SUBJECT/REPORT NO:	Temporary Use By-law to Zoning By-law No. 05-200 – Outdoor Commercial Patios and Temporary Tents (CI-20- F(4)) (PED20135(c)) (City Wide)
WARD(S) AFFECTED:	City Wide
PREPARED BY:	Alana Fulford (905) 546-2424 Ext. 4771
SUBMITTED BY:	Steve Robichaud Director, Planning and Chief Planner Planning and Economic Development Department
SIGNATURE:	

RECOMMENDATION

- (a) That approval be given to **City Initiative-20-F(4)** to establish a Temporary Use By-law for Zoning By-law No. 05-200, effective until March 31, 2025, to grant relief from and provide for additional locational permissions for Outdoor Commercial Patios for the Downtown Central Business District (D1) Zone, Downtown Prime Retail Streets (D2) Zone, Downtown Mixed Use (D3) Zone, Community 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, Mixed Use (TOC1) Zone, Local Commercial (TOC2) Zone, and Mixed Use High Density (TOC4) Zone within the City, on the following basis:
- (i) That the draft Temporary Use By-law, attached as Appendix “A” to Report PED20135(c), 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 A Place to Grow Plan 2019, as amended, and complies with the Urban Hamilton Official Plan;
- (b) That approval be given to **City Initiative-20-F(4)** to establish a Temporary Use By-law for Zoning By-law No. 05-200, effective until March 31, 2025, to provide improved operational flexibility for local businesses and institutional operations

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(specifically places of worship, hospitals, and educational establishments), by permitting the erection of temporary tents for six consecutive months for certain commercial zones, uses permitted in the Community Park (P2) Zone and the City Wide (P3) Zone, certain institutional uses in institutional zones, and certain commercial uses and accessory commercial uses to a permitted use in certain industrial zones within the City, on the following basis:

- (i) That the draft Temporary Use By-law, attached as Appendix “B” to Report PED20135(c), 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 A Place to Grow Plan (2020), and complies with the Urban Hamilton Official Plan;
- c) That staff be directed to report back, prior to the expiration of the Temporary Use By-laws attached as Appendix “A” and “B” to Report PED20135(c) or at the request of Council, to present staffs’ evaluation of these temporary permissions to determine if any modifications to the regulations for Outdoor Commercial Patios and/or temporary tents in Zoning By-law No. 05-200 is appropriate or whether some or all of the temporary permissions for Outdoor Commercial Patios and/or temporary tents should be established permanently.

EXECUTIVE SUMMARY

On August 21, 2020, City Council passed a Temporary Use By-law (By-law No. 20-181, in effect until December 31, 2020), to permit Outdoor Commercial Patios (OCPs) under certain conditions, in a side or rear yard that abuts a residential zone for certain commercial zones. The Temporary Use By-law also permitted entertainment on OCPs within the downtown area.

On October 14, 2020, City Council passed two temporary use by-laws. Temporary Use By-law No. 20-215, in effect until October 31, 2021, extended the opportunities for physical distancing due to COVID beyond December 31, 2020 by extending the OCP permissions of Temporary Use By-law No. 20-181 until October 31, 2021, and added a new regulation to allow temporary OCPs to be located within required parking spaces.

The second Temporary Use By-law passed on October 14, 2020 (Temporary Use By-law No. 20-214, in effect until October 31, 2021), allowed temporary tents for restaurants and institutional uses, namely places of worship, hospitals and educational establishments, for six consecutive months under certain conditions to accommodate physical distancing, whereas Zoning By-law No. 05-200 restricts the erection of temporary tents to five consecutive days.

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On August 13, 2021, City Council passed Temporary Use By-law No. 21-143 which amended Temporary Use By-law No. 20-181, as amended by Temporary Use By-law No. 20-215, and also amended Temporary Use By-law No. 20-214, by extending the temporary permissions for OCPs and temporary tents to December 31, 2021. By-law No. 21-143 also expanded the temporary tent permissions to additional commercial uses. The intent of the extension was to improve operational flexibility based on indoor and outdoor physical distancing measures resulting from COVID. The expansion of the permissions for temporary tents was specifically intended to facilitate the Province's COVID response - Roadmap to Reopen plan, implemented in June 2021.

The temporary use permissions for OCPs and temporary tents have expired. The purpose of this Report is to reinstate the temporary use permissions for both OCPs and temporary tents for a three year period. This coincides with the recent Council approval of a permanent program for temporary outdoor patios (PED22051). Additionally, staff are bringing forward Report PED16155(c), to remove the prohibition of commercial entertainment and recreation on OCPs now that the pilot project has concluded, through amendments to Zoning By-law No. 05-200 and the Zoning By-laws of the former Communities. Restoring the temporary use permissions for OCPs and temporary tents will allow staff to monitor the temporary permissions with the new outdoor patio program in place, and with the removal of the regulation prohibiting commercial entertainment/recreation on OCPs. Both reports are discussed in greater detail in the following sections of this Report.

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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 up to a three year period with the ability to extend the Temporary Use By-law. The extension may not exceed three years. More than one extension may be authorized by Council by passing an extending By-law relating to the effective time period.

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 No. 20-181 – Outdoor Commercial Patio Locational Requirements and Outdoor Entertainment

On August 21, 2020, City Council passed a Temporary Use By-law (By-law No. 20-181), to permit OCPs under certain conditions, in a side or rear yard that abuts a residential zone for certain commercial zones. The purpose of the Temporary Use By-law was to provide further opportunities for businesses to participate in the Outdoor Dining Districts and temporary outdoor patio program, while minimizing any potential adverse impacts on neighbourhood residential properties. The Temporary Use By-law also permitted entertainment on OCPs within the downtown area. The By-law was deemed in effect until December 31, 2020.

These temporary locational requirements applied 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 OCPs was restricted to commercial and mixed use and park/open space lands within the Downtown Secondary Plan area.

2.0 Temporary Use By-law Nos. 20-214 and 20-215 - Temporary Tents and an Addition to and Extension of Temporary Use Permissions for Outdoor Commercial Patios

On October 14, 2020, City Council passed a Temporary Use By-law (By-law No. 20-215, in effect until October 31, 2021), to extend the opportunities for physical distancing due to COVID beyond December 31, 2020 by extending the OCP permissions of Temporary Use By-law No. 20-181 until October 31, 2021, and to add a new regulation to allow temporary OCPs to be located within required parking spaces.

Also on October 14, 2020, City Council passed a Temporary Use By-law (By-law No. 20-214, in effect until October 31, 2021), to allow temporary tents for restaurants and institutional uses, namely places of worship, hospitals and educational establishments, for six consecutive months under certain conditions to accommodate physical distancing, whereas Zoning By-law No. 05-200 restricts the erection of temporary tents to five consecutive days. These temporary tents are not intended for human habitation.

The temporary tent permissions applied to certain Downtown zones, all Commercial and Mixed Use Zones with the exception of the Residential Character Commercial (C1) Zone, the Transit Oriented Corridor Zones with the exception of the Multiple Residential (TOC3) Zone, and all Institutional Zones.

These temporary amendments to Zoning By-law No. 05-200 were supported to facilitate businesses and certain institutional establishments to accommodate physical distancing measures through OCPs and temporary tents.

3.0 Temporary Use By-law No. 21-143 - Extension of Temporary Permissions for Outdoor Commercial Patios and Addition to and Extension of Temporary Permissions for Temporary Tents

On August 13, 2021, City Council passed a Temporary Use By-law (By-law No. 21-143, in effect until December 31, 2021), to improve operational flexibility based on indoor and outdoor physical distancing measures beyond October 31, 2021 by:

- Extending Temporary Use By-law No. 20-181, as amended by Temporary Use By-law No. 20-215, and Temporary Use By-law No. 20-214, until December 31, 2021 for OCPs and temporary tents; and,
- Expanding the temporary tent permissions established through Temporary Use By-law No. 20-214 to additional commercial uses, in addition to the existing temporary use permissions for restaurants and places of worship, hospitals, and educational establishments in institutional zones. To facilitate Ontario's Roadmap to Reopen, Temporary Use By-law No. 20-214 was modified to allow temporary tents for an expanded range of uses in certain commercial zones, uses permitted in the Community Park (P2) Zone and the City Wide (P3) Zone, and personal services, restaurants, and retail, and accessory commercial uses to a permitted use in certain industrial zones.

Temporary Use By-law No. 20-181, as amended by Temporary Use By-law Nos. 20-215, and 21-143, and Temporary Use By-law No. 20-214, as amended by Temporary Use By-law No. 21-143, have now expired.

4.0 Reinstating Temporary Use Permissions for Outdoor Commercial Patios and Temporary Tents

Recently, through Report PED22051, Council approved the creation of a permanent program to permit temporary outdoor patios on both public and private property. The already-permanent "On-Street Patio Pilot Program" and the temporary COVID-related "Outdoor Dining Districts Program" have been combined into a single, consolidated Temporary Outdoor Patio Program that is now a permanent City program.

The "On-Street Patio Pilot Program" was initiated in 2016 as a pilot project and became permanent in 2017. It allows bars, restaurants and cafes to occupy one or more on-street parking spaces in front of their businesses as a temporary "pop-up patio".

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The “Outdoor Dining Districts Program” was approved by Council in May 2020 in response to the COVID-19 pandemic. It expands on the on-street patio program by providing for temporary patios on public property (including streets, sidewalks, boulevards and off-street parking areas) and on private property such as the parking areas of malls and strip malls.

In addition, through Report PED16155(c), staff are reporting back to Council on the results of a pilot project which in 2017, established a Temporary Use By-law to allow commercial entertainment/recreation on Outdoor Commercial Patios in seven pilot project areas. Report PED16155(c) recommends the pilot project be implemented on a permanent basis in Zoning By-law No. 05-200 and the Zoning By-laws of the former Communities. This recommendation removes the prohibition of commercial entertainment and recreation on OCPs and employs the Noise Control By-law as the preferred method to regulate noise.

As noted in Report PED22051, Planning staff have been reviewing the temporary permissions established for OCPs and temporary tents. Consequently, the temporary permissions for OCPs and temporary tents are recommended to be reinstated for a three year period. During this time, staff will evaluate whether the temporary locational permissions for OCPs is appropriate given that commercial entertainment and recreation on OCPs will be permanently permitted in the Zoning By-laws. The temporary tent permissions, which provide businesses and certain institutional uses with greater operational flexibility, will also be evaluated during this period. At the conclusion of the three year period, staff will report back to Council with recommended action for Council’s consideration.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

1.0 Provincial Policy

A Place to Grow: Growth Plan for the Greater Golden Horseshoe 2019, as amended and the Provincial Policy Statement 2020 are silent on Outdoor Commercial Patios and temporary tents since these uses are accessory to permitted uses.

2.0 Urban Hamilton Official Plan (UHOP)

Outdoor Commercial Patios and 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 commercial uses (Policy E.3.8.9), in part, provides that local commercial uses be compatible with the surrounding area in terms of noise impact.

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Section F.1.11 contains policies with respect to Temporary Use By-laws. Report PED21135(a) contains an explanation of the relevant policies.

The re-introduction of locational permissions for OCPs and the permissions 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

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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 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.”

Temporary Use By-law No. 20-181, as amended by Temporary Use By-law Nos. 20-215, and 21-143, introduced the following provisions as Temporary Use Provision 6:

- “a) That Section 4.20 c) shall not apply; and,
- b) That an Outdoor Commercial Patio be:
 - i) Setback a minimum of 5.0 metres from any residential zone;
 - ii) Not obstruct a driveway, parking aisle or fire route; and,
 - iii) May occupy required parking spaces.”

Temporary Use Provision 6 expired on December 31, 2021.

3.2 Temporary Uses

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

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“4.18 TEMPORARY USES

Nothing in this By-law shall prevent the use of any land or erection or use of any building for:

- 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 five 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.

Temporary Use By-law No. 20-214, as amended by Temporary Use By-law No. 21-143, permitted, on a temporary basis, the following permissions for temporary tents for certain commercial uses and certain zones (Temporary Use Provision 8):

- “1. The temporary use by-law with respect to tents, shall not apply to the Residential Commercial (C1) Zone;
- 2. The temporary tent shall not be in operation for more than six consecutive months;
- 3. The temporary tent shall not be subject to any minimum or maximum yard setbacks or parking requirements of the zone;
- 4. Notwithstanding Clause 3. above, the temporary tent shall be setback a minimum of 5 metres from a Residential Zone;
- 5. The temporary tent shall not occupy areas devoted to barrier free parking space(s) or loading space(s);
- 6. The temporary tent shall not be used for human habitation; and,

7. For the purposes of this Temporary Use by-law, a temporary tent shall not be considered as an accessory building.”

Temporary Use Provision 8 expired on December 31, 2021.

RELEVANT CONSULTATION

Consultation will be ongoing with staff from Planning and Economic Development as the Temporary Use By-laws are reinstated and monitored.

ANALYSIS AND RATIONALE FOR RECOMMENDATIONS

In the past number of years, there have been a series of initiatives implemented for Outdoor Commercial Patios. The first, which was the “On-Street Patio Pilot Program”, was introduced in 2016 to allow bars, restaurants and cafes to occupy one or more on-street parking spaces in front of their businesses as a temporary “pop-up patio”.

In response to COVID, the Mayor’s Task Force on Economic Recovery recommended the City consider options to support local businesses through actions that facilitate placemaking, outdoor activities, and animation of commercial streets. One such response was the “Outdoor Dining Districts” program which provided for temporary patios on:

- (a) Public property including streets, sidewalks, boulevards and off-street parking areas; and,
- (b) Private property such as the parking areas of malls and strip malls.

While the basis for establishing each program differed, their implementation created opportunities for bars, restaurants and cafes to provide outdoor dining on temporary patios. Another initiative in response to the Mayor’s Task Force on Economic Recovery was the introduction of temporary locational permissions for OCPs, initially established through Temporary Use By-law No. 20-181. The temporary locational permissions not only responded to this directive by providing flexibility in the location of OCPs, but also facilitated the Outdoor Dining Districts Program.

As detailed in PED22051, the “On-Street Patio Pilot Program” has operated successfully since 2016. As well, the business uptake for the “Outdoor Dining Districts Program” has also been very high in both 2020 and 2021, the two years the program has been in place. These programs have now been merged and made permanent.

Also ongoing during this time was the pilot project permitting commercial entertainment / recreation on OCPs in pilot project areas. This pilot project has been ongoing since

2017. Now that the pilot project is concluding, Report PED16155(c) recommends the pilot project be implemented on a permanent basis by removing the prohibition of commercial entertainment and recreation on OCPs in the City's Zoning By-laws.

Re-introducing the now expired temporary use permissions for OCPs demonstrates continued support for local businesses by maintaining the more permissive locational criteria for OCPs, and further, provides an opportunity for staff to evaluate the merits of these temporary locational permissions now that commercial entertainment and recreation on OCPs are recommended to be made permanent in the City's Zoning By-laws.

The continuation of the temporary tent permissions also demonstrates continued support for local business and certain institutional operations by providing improved operational flexibility. Likewise, these temporary permissions will be monitored by staff to evaluate the merits of the temporary use by-law, with the findings presented when staff report back to Council at the expiration of the temporary use by-laws proposed through this report.

ALTERNATIVES FOR CONSIDERATION

Council can choose not to reinstate the Temporary Use By-laws for OCPs and / or temporary tents, in which case, the existing regulations for temporary uses and OCPs shall apply.

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 to Zoning By-law No. 05-200 for Outdoor Commercial Patios

Appendix "B" – Proposed Temporary Use By-law to Zoning By-law No. 05-200 for temporary tents

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