



CITY OF HAMILTON
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Planning Division

TO:	Chair and Members Planning Committee
COMMITTEE DATE:	August 10, 2021
SUBJECT/REPORT NO:	Extension to Temporary Use By-law to Zoning By-law No. 05-200 – Outdoor Commercial Patios, Addition and Extension to Temporary Use By-law to Zoning By-law No. 05-200 - Temporary Tents (CI-20-F(3)) (PED20135(b)) (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:	

RECOMMENDATIONS

- (a) That approval be given to **City Initiative-20-F(3) Outdoor Commercial Patios and Temporary Tents for Commercial, Institutional, and Industrial Uses** to amend Temporary Use by-law No. 20-181, as amended by By-law No. 20-215, under Zoning By-law No. 05-200 to further extend the time period for the outdoor commercial patio regulations until December 31, 2021, on the following basis:
- (i) That the draft Temporary Use By-law, attached as Appendix “A” to Report PED20135(b), 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.
- (b) That approval be given to **City Initiative-20-F(3) Outdoor Commercial Patios and Temporary Tents for Commercial, Institutional, and Industrial Uses** to amend Temporary Use by-law No. 20-214 under Zoning By-law No. 05-200 to extend the time period for permissions for temporary tents until December 31, 2021 and to extend the permissions for temporary tents to certain commercial zones, uses

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permitted in the Community Park (P2) Zone and the City Wide (P3) Zone, certain commercial uses and accessory commercial uses to a permitted use in certain industrial zones, on the following basis:

- (i) That the draft Temporary Use By-law, attached as Appendix “A” to Report PED20135(b), 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.

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, 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 outdoor commercial patios 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 outdoor commercial patio permissions of Temporary Use By-law No. 20-181 until October 31, 2021, and added a new regulation to allow temporary outdoor commercial patios 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), was 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.

The purpose of Report PED20135(b) is to present modifications to Zoning By-law No. 05-200 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 outdoor commercial patios and temporary tents; and,

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- 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 is to be 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.

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 up to a 3-year period with the ability to extend the Temporary Use By-law. The extension may not exceed 3 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 outdoor commercial patios 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 outdoor commercial patios within the downtown area. The By-law was deemed in effect until December 31, 2020.

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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 outdoor commercial patios 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 outdoor commercial patio permissions of Temporary Use By-law No. 20-181 until October 31, 2021, and to add a new regulation to allow temporary outdoor commercial patios 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 outdoor commercial patios and temporary tents.

3.0 Council Motion – Extension of Support for Businesses Operating Outdoors

On June 23, 2021, City Council passed the following motion:

“WHEREAS, the City of Hamilton is committed to supporting our local businesses as they try to navigate and respond to the challenges of the COVID pandemic;

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WHEREAS, the Mayor's Task Force on Economic Recovery has recommended the City consider options to support local businesses through actions that facilitate placemaking, outdoor activities, and animation of commercial streets;

WHEREAS, on August 21, 2020 City Council through Report PED20135 approved Temporary Use By-law 20-181 to modify zoning standards with respect to where outdoor patios for restaurants, cafes, and similar uses could be located in order to facilitate the Outdoor Dining Districts Program;

WHEREAS, on October 14, 2020 City Council through Report PED20135(a) approved Temporary Use By-law 20-214 to allow temporary tents (not to be used for human habitation) for restaurants, places of worship, hospitals and schools for up to 6 consecutive months instead of the otherwise permitted five consecutive days;

WHEREAS, all of the Temporary Use By-laws, and therefore the special provisions for patios and for temporary tents, are currently set to expire on October 31, 2021;

WHEREAS, on June 7, 2021, the Province announced that Ontario will move into Step One of the Roadmap to Reopen as of Friday, June 11, which includes permission for outdoor fitness classes, outdoor personal training, and the opening of concert venues, theatres and cinemas outdoors for the purpose of rehearsing or performing a recorded or broadcasted concert, artistic event, theatrical performance or other performance with no more than 10 performers;

WHEREAS, these outdoor uses may seek to erect temporary tent structures, which may require Building Permits, and which will therefore need to meet all applicable zoning; and,

WHEREAS the current Temporary Use By-laws for the erection of temporary tents do not apply to these other outdoor uses.

THEREFORE BE IT RESOLVED:

- (a) That staff be directed to prepare the appropriate Public Meeting notice under the Planning Act and associated report for Planning Committee to consider the following Zoning By-law 05-200 amendments at a future statutory public meeting:
 - (i) The necessary amendments to Temporary Use By-law 20-214 and other temporary use by-laws as necessary to include temporary tents associated with outdoor retail, commercial, entertainment, arts, and recreational uses as

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well as ancillary uses to existing permitted uses for up to 6 consecutive months and within required parking spaces; and,

- (ii) The necessary amendments to the existing Temporary Use By-laws to extend the permissions for patios and temporary tents through to December 31, 2021.
- (b) That Council direct staff to immediately suspend the enforcement of the current zoning by-law provisions that were modified by the existing Temporary Use By-laws as they relate to outdoor retail, commercial, entertainment, arts, and recreational uses as well as ancillary uses to existing permitted uses, and that the suspension of enforcement continue until such time as Council has considered the requested amendments to the Temporary Use By-laws.”

This report implements the June 23, 2021 Council direction.

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 permitted uses.

2.0 Urban Hamilton Official Plan (UHOP)

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

The extension to the time period for Outdoor Commercial Patios and the extension of the time period and expansion of use permissions for temporary tents conform to the Urban Hamilton Official Plan.

3.0 Zoning By-law No. 05-200

As noted above, there are temporary use by-laws for outdoor commercial patios and the erection of temporary tents. These by-laws amended the regulations in Zoning By-law No 05-200 on a temporary basis. The proposed amendments include extending the time period for the temporary use permissions until December 31, 2021.

No changes to the outdoor commercial patio regulations are proposed.

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Additional amendments are required to add a range of uses where the temporary erection of tents is permitted. No changes to the regulations are proposed.

RELEVANT CONSULTATION

N/A

ANALYSIS AND RATIONALE FOR RECOMMENDATIONS

1. On June 7, 2021, the Province announced that Ontario will move into Step One of the Roadmap to Reopen as of Friday, June 11th. Step One of the Roadmap to Reopen expands permissions for outdoor uses. Certain temporary amendments to Zoning By-law No. 05-200 can facilitate businesses and institutional establishments to accommodate physical distancing measures as the Province reopens, through the temporary relaxation of certain regulations, specifically respecting outdoor commercial patios and temporary tents.
2. City Council, at its meeting of June 23, 2021, directed staff to prepare the necessary amendments to Temporary Use By-law No. 20-214 to expand the permissions for temporary tents to additional commercial uses in certain commercial zones, uses permitted in the Community Park (P2) Zone and City Wide (P3) Zone, and certain commercial uses and accessory commercial uses to a permitted use, in certain industrial zones. Further, staff were directed to amend Temporary Use By-law No. 20-214 to extend the time period the by-law is in effect to December 31, 2021. This report implements the June 23, 2021 Council direction.
3. City Council, at its meeting of June 23, 2021, further directed staff to amend Temporary Use By-law No. 20-181, as amended by Temporary Use By-law No. 20-215, for outdoor commercial patios, by extending the time period the by-law is in effect to December 31, 2021. This report implements the June 23, 2021 Council direction.

ALTERNATIVES FOR CONSIDERATION

N/A

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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.

APPENDICES AND SCHEDULES ATTACHED

Appendix “A” to Report PED21035(b) – Proposed Temporary Use By-law to Zoning By-law No. 05-200 for outdoor commercial patios and temporary tents.