



SUBJECT: Amendment to Zoning By-law 2020 to extend the temporary use to permit entertainment/recreational uses on outdoor patios in the downtown

TO: Planning and Development Committee

FROM: Department of City Building - Planning Building and Culture

Report Number: PB-35-19

Wards Affected: 2

File Numbers: 520-05/19

Date to Committee: July 9, 2019

Date to Council: July 15, 2019

Recommendation:

Approve an amendment to Zoning By-Law 2020 to extend the Temporary Use to permit entertainment / recreational uses on outdoor patios in the Downtown, with a time frame not to exceed three years, as recommended by staff in Appendix B to department of city building report PB-35-19.

Purpose:

The purpose of this report is to provide an update on the Temporary Use By-Law to permit entertainment / recreational uses on patios Downtown, approved in 2016. In August 2019, the three years of the Temporary Use By-Law will expire. This report provides an assessment of the past three years and recommends an extension of three years to the Temporary Use By-Law.

Additionally, the purpose of this report is to address goals in the City's Strategic Plan and Core Commitment: Downtown Vision and Action Plan:

A City that Grows

- Promoting Economic Growth

An Engaging City

- Community Building through Arts and Culture via Community Activities

Core Commitment is Burlington Downtown's vision document. The purpose of Core Commitment is to create "an active waterfront downtown destination that showcases the cultural heart of Burlington". This vision was re-established in 2013 and was the product of significant public consultation with over 1,800 submissions from residents and business owners from the downtown and across the city.

Core Commitment contains a set of guiding principles to assist in decision making related to Downtown. Among the guiding principles is the idea that "a healthy and vibrant downtown means that there is energy and activity; a "buzz", and that "people can expect that they will find something going on when they come downtown." Additionally, part of the vision of Core Commitment includes the Downtown offering a range of choices of things to do.

Background and Discussion:

In August 2016, Council adopted By-Law 34-2016, a By-Law to amend Zoning By-Law 2020, to permit entertainment and recreational uses on outdoor patios in the Downtown (PB-66-16). The adoption of the By-Law was initiated when staff became aware that the already established practice of live entertainers on patios was not permitted through the Zoning By-Law's definition of "Patio: Outdoor":

An outdoor area associated with a permitted restaurant use, located on the same lot as the restaurant, is used on a seasonal basis only and which shall provide tables and seating for patrons to be served meals and/or refreshments for consumption on the premises. Patio seating shall not exceed 50% of the capacity of the restaurant. An outdoor patio shall be used exclusively for dining and **shall not include any recreational or entertainment use or activity.**

It is worth noting that pop-up patios, those located within the city's right of way, do not meet the definition of an Outdoor Patio and as such, are not being considered through this Temporary Use By-Law.

Prior to August 2016, and based on the definition of outdoor patio in Zoning By-Law 2020, as amended, a restaurant was not permitted to have a live entertainer or the like, perform on an outdoor patio, but could perform inside the establishment. Additionally, a restaurant would be permitted to locate portable speakers on an outdoor patio for the purposes of playing pre-recorded music, or to play the music of an entertainer performing inside the establishment.

Given the City's goals of achieving a vibrant and lively downtown, Downtown was identified as a pilot area to test permitting live music (entertainment / recreation) uses

on patios. For the purposes of the pilot, Downtown was defined by the Downtown Mixed-Use Centre (Zones DC, DW, DL-A, DL-B, DL-C, DRH, DRM) and included the commercial, mixed-use zones in the Downtown (not residential areas).

The program was enacted under Section 39 of the *Planning Act* using a Temporary Use By-Law for a three-year period. The permissions of the By-Law were subject to the following conditions:

- Prohibiting the operation of any electronic device intended to amplify sound
- Permitting the outdoor entertainment / recreational uses between the hours of 12:00pm until 10:00pm
- Prohibiting the outdoor entertainment / recreational uses after 6:00pm on Sundays and Holidays
- Limiting the outdoor entertainers to one entity at a time (i.e. only one band or one group or one musical act can perform on a patio at any given time)
- The outdoor entertainment/recreational uses remain subject to all other City By-Laws in effect, including the City's Nuisance and Noise By-Law.

Currently, the permissions and conditions noted above are included in Footnote (j) to Table 6.2.1 in Part 6 and Footnote (f) to Table 6.2.2. of Zoning By-law 2020, as amended. These permissions and conditions will expire on August 17, 2019. The extension to the Temporary Use By-Law will allow this use to be permitted (subject to the same conditions) until August 2022. This extension will allow such uses to be permitted in the downtown with expansion city wide to be considered with the Comprehensive Zoning By-Law Review.

Review of the Pilot Program

Through a joint effort with the Burlington Downtown Business Association (BDBA), 30 Downtown restaurant establishments were consulted regarding their experiences with entertainment uses on patios since the adoption of the Temporary Use By-Law.

The following questions were asked of Downtown restaurant owners with a patio:

1. Did you provide an entertainment or recreational use, such as a live music performer on your patio in the last 3 years?
2. Did you hear any feedback from patrons or neighbours (positive or negative) regarding your providing an entertainer or recreational use on your patio?
3. Do you think entertainment-type uses should continue to be permitted on Downtown patios?

Ten responses were jointly received by the City and BDBA. The responses received were positive and all respondents indicated that they felt entertainment and recreational

uses should be permitted on downtown patios, even if they themselves had not taken advantage of the permissions.

Notably, many respondents also indicated the importance of being courteous neighbours and citizens of the downtown and felt that limitations in line with those provided in the By-Law were appropriate. Appendix C provides a summary of all feedback received.

Additionally, staff consulted with the City Building Department's By-Law Enforcement team to better understand the number and nature of complaints related to entertainment and recreational uses on patios in the downtown over the three years of the pilot program. It was indicated that there have not been any formal or informal complaints with respect to entertainment or recreational uses specifically, on patios in the Downtown.

Based on the results indicated above, staff is of the opinion that the program has been successfully implemented in the Downtown. Staff recommends that similar permissions be explored throughout the rest of the City through a detailed analysis of the potential areas where this permission could be implemented as well as their surrounding contexts and existing conflict areas. This review could be completed through the Comprehensive Zoning By-law review.

Connection to other City Initiatives

Staff is proposing that the temporary permission for entertainment uses on patios in the Downtown should be extended for an additional 3-year period. It is anticipated that within the three years of this extension to the Temporary Use By-Law, the City Building Department will initiate the Comprehensive Zoning By-Law review process, upon completion of the review of the new Official Plan. At this time, the city can explore the extension of this permission to areas beyond the Downtown more comprehensively.

Options considered

Staff would like to provide a few options below for Council's consideration:

Staff has considered the option of permitting entertainment / recreational uses on patios city-wide as a pilot project to allow the use to be tested without making permanent changes. Should Council wish to enable a city-wide pilot program, a public notice process could be enabled and the program quickly established.

Staff considered making permanent modifications to Zoning By-Law 2020 to permit entertainment / recreational uses through the City. Staff is of the opinion that the Comprehensive Zoning By-Law review would be a more appropriate opportunity for a

thorough exploration of the implications of permitting entertainment / recreation uses on patios city-wide, taking into account the various unique contexts.

Another option would be to allow the current Temporary Use By-Law to lapse and revert to the former situation where entertainment / recreational uses would not be permitted on outdoor patios, city wide. Staff believes this option would run counter to the city's strategic initiatives and the Downtown strategic plan and vision. Further, staff believes the pilot program has been largely successful and given the lack of complaints related to the use of Downtown patios for entertainment-type use, staff don't recommend this option.

Financial Matters:

Not Applicable

Connections:

Staff have connected with the Burlington Downtown Business Association (BDBA) to understand the impact of the pilot program and appetite to continue to permit entertainment / recreational uses on Downtown outdoor patios. Through the initiative of the BDBA, staff heard from 10 restaurant establishments about their experiences. Staff will continue to work with the BDBA and Burlington Restaurant Association to assist in implementing this program and communicating Council's decision.

Public Engagement Matters:

Like other Zoning By-Law amendment processes, the *Planning Act* requires the City to provide at least 30 days notice of the statutory public meeting for the By-Law and, if the Temporary Use By-Law is approved, a 20-day appeal period will follow.

A public notice was placed in City Update in the Burlington Post on Thursday, May 23rd. As a result of the notice, staff received one phone call for clarification.

Conclusion:

The initial three years of the pilot program have been largely successful in the Downtown. Staff recommends that the program be extended in the Downtown for another three years and subsequently reviewed through the Comprehensive Zoning By-Law Review process for expansion city-wide.

Respectfully submitted,

Jenna Puletto, MCIP, RPP
Special Business Area Coordinator
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Appendices:

- A. Map of the Temporary Use By-law Boundary
- B. Temporary Use By-law
- C. Downtown Restaurant Survey Feedback

Notifications:

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Burlington Restaurant Association, c/o Burlington Downtown Business Association

Report Approval:

All reports are reviewed and/or approved by Department Director, Director of Finance and Director of Legal. Final approval is by the City Manager.