



**SUBJECT: Statutory Public Meeting and Recommendation Report for
Temporary Use By-law for 1860, 1890, & 1900 Appleby Line**

TO: Planning and Development Committee

**FROM: Department of City Building - Planning Building and
Culture**

Report Number: PB-30-19

Wards Affected: 4

File Numbers: 520-01/19

Date to Committee: May 14, 2019

Date to Council: May 27, 2019

Recommendation:

Approve the application submitted by ICP Developers Inc., 1860 Appleby Line, Burlington ON, L7L 0B7 to permit the temporary use of lands for limited retail and service commercial uses; and

Enact the amending Zoning By-law 2020.409, contained in Appendix D of department of city building report PB-30-19, to rezone lands at 1860, 1880, and 1900 Appleby Line from "Uptown Employment (UE)" to "Uptown Employment with Site Specific Exception (UE-496)" for a time period that shall not exceed three years from the date of passing of the by-law, in accordance with Section 32(2) of the *Planning Act*; and

Deem that Zoning By-law 2020.409 conforms to the Official Plan of the City of Burlington; and

Instruct the Director of Capital Works to utilize previously collected securities for the development to complete the municipal sidewalk connection on Ironstone Drive, if not completed by the applicant, to the satisfaction of the Director of City Building and the Director of Capital Works, by October 31, 2019.

Purpose:

The purpose of this report is to provide background information and a staff recommendation for the Statutory Public Meeting for this Temporary Use By-law

application. The following objectives of Burlington's Strategic Plan (2015-2040) apply to the discussion and consideration of the subject application:

A City that Grows

- Promoting Economic Growth
 - 1.1.c) The city's vision for employment lands has been developed with aggressive targets. The community, developers and industry together are achieving our economic potential. The city, along with its partners, supports the development of employment lands through timely planning, infrastructure investments and other incentives.
 - 1.1.d) Employment lands are connected to the community and region through active transportation and public transit. Employment lands include transportation links and options that are easy to access and contribute to a sustainable, walkable and bikeable community.
 - 1.1.e) Small businesses contribute to the creation of complete neighbourhoods where residents are close to goods and services.

RECOMMENDATION:		Approve	Ward:	4
Application Details	APPLICANT: OWNER: FILE NUMBERS: TYPE OF APPLICATION: PROPOSED USE:	IBI Group Inc. ICP Developers Inc 520-01/19 Temporary Use By-law No change. Recognize existing floor areas for service commercial uses and retail uses on the site as well as other site deficiencies related to the existing use		
Property Details	PROPERTY LOCATION: MUNICIPAL ADDRESSES: PROPERTY AREA: EXISTING USE:	West side of Appleby Line at the south west corner of the intersection of Ironstone Drive and Appleby Line 1860, 1890, and 1900 Appleby Line 20,877m ² Mixed use commercial plaza		
Documents	OFFICIAL PLAN Existing: OFFICIAL PLAN Proposed: ZONING Existing: ZONING Proposed:	Uptown Employment Uptown Employment Uptown Employment (UE) Uptown Employment (UE) with temporary site-specific exceptions		
Processing Details	APPLICATION RECEIVED: STATUTORY DEADLINE: NEIGHBOURHOOD MEETING: PUBLIC COMMENTS:	December 21, 2018 May 20, 2019 No neighbourhood meeting 7 written comments received		

Background and Discussion:

On December 21, 2018 the Department of City Building received a complete application for a Temporary Use By-law for 1860, 1880, and 1900 Appleby Line (the “subject lands”). The purpose of the application is to temporarily recognize the existing service commercial and retail uses on the property as permitted uses in the absence of required minimum floor area of employment uses. The application does not propose any new development for the subject lands.

Site Description

The subject lands, known as 1860, 1880, and 1900 Appleby Line, are located at the south-west corner of Appleby Line and Ironstone Drive within the area known as Uptown. The lands are in a location designated as Uptown Employment in the City’s Official Plan, and zoned Uptown Employment in the City’s Zoning By-law 2020, as amended. A small portion of land at the south west corner of the site was recently added to subject lands from the adjacent Burlington Fire Station and has retained the General Employment GE1 zone. No development is proposed for this newly added area of the subject lands. The location and zoning of the subject lands is illustrated in Appendix A to this report.

Currently, the subject lands are developed as a commercial plaza comprised of two buildings containing a variety of retail, service commercial, recreational and office uses within two buildings. The building to the north has approximately 2,044.4m² of total floor area, and the building to the south has approximately 2983.4m² of total floor area. Two standard restaurants are located at the easternmost end of the two buildings, each with an outdoor patio abutting Appleby Line. The site currently has a total of 282 vehicle parking spaces, including 10 accessible parking spaces. The site has pedestrian access from the sidewalk along Appleby Line as well as the sidewalk leading from Appleby Line along Ironstone Drive. The sidewalk along Ironstone Drive has been partially constructed along the property frontage. Vehicle access to and from the site is provided from two driveway entrances – one from Appleby Line and one from Ironstone Drive.

Surrounding land uses include:

- North: A plaza developed with two single storey buildings containing retail and service commercial uses, and a 3-storey building containing professional offices;
- South: A single storey building containing a mix of retail, service commercial, recreational and office uses;
- East: An 8-storey retirement home building with ground floor retail and service commercial uses; and,

- West: Burlington Fire Station No. 8, beyond which the lands are developed with general employment uses including industrial uses.

Development History

The site was intended to be developed in three phases. Phase 1 consisted of the northernmost building with a majority of service commercial and retail uses. Phase 2 consisted of the southernmost building with a majority service commercial and retail uses. Phase 3 was intended to be a 4-storey office building with underground parking developed at the north-west corner of the site. The office component of the development would allow the site to be in compliance with the requirements for floor area for employment uses as specified Uptown Employment (UE) zoning. A phasing sketch of the subject lands is provided in Appendix B to this report.

In 2010, the land owners applied to the Committee of Adjustment for a minor variance to facilitate the initial Phase 1 and 2 developments of the plaza and received approval for 10 variances (540-02-A001/2010). The nature of these variances was to allow the first two phases of the plaza to develop with a greater than permitted percentage of retail and service commercial uses prior to the construction of the Phase 3 office building. In 2012, a request was made for additional variances to recognize minor changes to the building areas and to reduce the required parking for all three phases of the development (540-02-A105/2012). As part of the 2012 variance approval, a condition was added to require that the applicant obtain a zoning certificate and building permit for the Phase 3 office building component of the development by March 15, 2014. Following approval of the 2012 decision, the applicant was not able to secure a tenant for the office building and therefore did not apply for the zoning clearance and building permit for Phase 3.

In 2014 the applicant sought approval to extend the 2012 variances (540-02-A009/2014). In review of the 2014 minor variance application, staff noted minor discrepancies with what was built on site compared to what was approved in the Site Plan (Minor Modification Site Plan approved on August 31, 2012). The requested variances included a maximum permitted retail and service commercial floor area of 74% of the two buildings, recognition that both buildings were less than the required 3,000m² floor area, variance from the required building height, decreased landscape areas separating parking areas, and adjusted parking requirements. The minor variance approval was received on February 24, 2014 and required that a building permit be issued for the Phase 3 office building within 5 years. The variances from 2014 were given an expiration date of March 15, 2019. To date, no building permit has been obtained to develop the Phase 3 office building, and the variances that applied to the property have since lapsed.

Description of Application

IBI Group Inc. has made application for a Temporary Use By-law (TUB) on behalf of ICP Developers Inc. for the subject lands. No new development is proposed by way of the TUB for the lands. A TUB is an instrument provided to municipalities under Section 39(1) of the *Planning Act* to allow the temporary use of land, buildings, or structures for a purpose that is otherwise prohibited by the municipality's Zoning By-law. The TUB permits the specified uses for a time period not to exceed three years from the date of the by-law passing. After the initial three years, Council may grant extensions to the temporary use for periods of not more than three years. TUBs are processed in the same manner as Zoning By-law Amendments under Section 34 of the *Planning Act*.

The application has been made to temporarily permit the existing amount of retail and service commercial uses that currently occupy the site in the absence of the required floor area for employment uses required by the Uptown Employment (UE) zone. The applicant has requested the TUB in order to allow additional time to consider how the subject lands will develop in the future. Any future development on the subject lands shall be subject to the required development application process.

Technical Reports

The following information and plans were submitted in support of the application. This information can also be accessed online at: www.burlington.ca/1900Appleby

- [Planning Justification Report](#). Prepared by IBI Group Inc., dated December 21, 2018.
- [Property Survey](#). Prepared by Barich Grenckie Surveying Ltd., dated May 31, 2018.
- [Topographic Survey](#). Prepared by Barich Grenckie Surveying Ltd., dated March 31, 2017.
- [Retail Units Survey](#). Prepared by Measurex, verified by Brenda Izen, Architect.
- [As-Built Site Plan](#). Prepared by Kozen Design Associates, dated February 18, 2019.
- [Environmental Site Screening Questionnaire](#). Signed by the land owner, dated January 3, 2019.
- [Phase 1 Environmental Site Assessment](#). Prepared by Pinchin Ltd., dated June 28, 2018.

Policy Framework:

The application for Temporary Use By-law is subject to the following policy framework:

Provincial Policy Statement (2014)

The Provincial Policy Statement (PPS) is intended to provide broad policy direction on matters related to land use and development that are of provincial interest. The PPS provides policies for development based on efficient use of land and infrastructure, protection of natural resources, protection of public health and safety, and residential and employment area development including a range and mix of uses. The PPS requires that settlement areas shall be the focus of growth and development. Decisions affecting planning matters made on or after April 30, 2014 “shall be consistent with” the PPS. The following PPS policies apply to the TUB application for the subject lands:

Policy 1.1.3.1: “Settlement areas shall be the focus of growth and development, and their vitality and regeneration shall be promoted”.

The subject lands are located within the Urban Planning Area Boundary according to Schedule A of the City’s Official Plan, and therefore are located within a settlement area. The application for a Temporary Use By-law allows the existing plaza to continue to operate legally, therefore ensuring the vitality of a mixed-use area of Uptown Burlington.

Policy 1.1.3.2: Land use patterns within settlement areas shall be based on:

a) Densities and a mix of land uses which:

1. Efficiently use land and resources;
2. Are appropriate for, and efficiently use, the infrastructure and public service facilities which are planned or available, and avoid their unjustified and or/uneconomical expansion;
3. Minimize negative impacts to air quality and climate change, and promote energy efficiency;
4. Support active transportation; and,
5. Are transit-supportive, where transit is planned, exists or may be developed.

The application for a TUB does not propose any new development on the subject lands, and rather seeks approval for the temporary use of the lands for service commercial and retail use greater than that permitted by the City’s Zoning By-law. The existing uses are well used by the immediate neighbourhood. To not allow them to operate would be an inefficient use of the land and the physical resources that have been utilized to build this development. The development utilizes existing municipal infrastructure and does not propose any additional expansion to the infrastructure through this application. The TUB will ensure that nearby local residents will continue to have access to a variety of uses offered on this site. If the uses were not to be permitted, local residents would possibly have to travel further and utilize automobiles, thereby potentially negatively impacting air quality. The existing plaza is located within a mixed-use area of Uptown

Burlington and is reasonably accessible by active transportation. However, Staff have recommended that the applicant construct the sidewalk connection on Ironstone Drive in order to complete the pedestrian network surrounding the site, therefore improving the active transportation experience in the immediate area. A Burlington Transit bus stop for routes 11 (Sutton) and 15 (Appleby-Walkers) is located along Appleby Line, directly in front of the subject lands. The continued operation of the existing uses on the subject lands supports the viability of the transit routes along this corridor.

Planning Staff support the application for a Temporary Use By-law as the continued use of the subject lands during the period of time specified is consistent with the policies of the PPS.

Growth Plan for the Greater Golden Horseshoe (2017)

The Growth Plan for the Greater Golden Horseshoe (Growth Plan) provides specific growth management policy direction for the Greater Toronto and Hamilton Area (GTHA) and focuses on development in the existing urban areas through intensification. The guiding principles of the Growth Plan include building complete communities that are vibrant and compact, and utilizing existing and planned infrastructure in order to support growth in an efficient and well-designed form. As noted earlier, there is no new development planned for the subject lands in the near future, and the Temporary Use By-law is required in order to allow the existing uses to continue to operate while the future development of the lands is being considered.

Growth Plan policy 2.2.1.2 a) requires that forecasted growth to the horizon of the Plan will be allocated based on the vast majority of growth being directed to settlement areas that have delineated a built boundary, have existing or planned municipal water and wastewater systems, and can support the achievement of complete communities. Policy 2.2.1.2 c) requires that, within settlement areas, growth will be focused in delineated built-up areas, strategic growth areas, locations with existing or planned transit, with a priority on higher order transit, and areas with existing or planned public service facilities. Growth Plan policy 2.2.2.4 d) requires that municipalities develop a strategy to achieve their minimum intensification targets in the built-up areas which will ensure that lands are zoned appropriately, and that development is designed in a manner that supports the achievement of complete communities.

The subject lands are located within the built boundary of the City of Burlington and are located on full municipal services. The existing site operates as a commercial plaza within the mixed-use area of Uptown Burlington and contributes to the local amenities serving nearby residents and employees of adjacent employment uses. The continued operation of the site for the time period of the TUB would ensure that this area of Uptown continues to contribute to a complete community. The site is served by existing local transit along Appleby Line, and the continued use of the lands during the time of

the TUB will contribute to the viability of the transit service in the area. The TUB will function as temporary zoning on the subject lands to regulate the extent of the retail and service commercial uses in order to ensure that a range and mix of uses are provided. Planning Staff are of the opinion that the proposed TUB generally conforms to the policies of the Growth Plan.

Region of Halton Official Plan

The subject lands are designated as Urban Area according to the Regional Official Plan (ROP). The Urban Area objectives promote growth that is compact and transit supportive. The subject lands are also located adjacent to a Higher Order Transit Corridor along Appleby Line (identified on Map 3 of the ROP). The subject lands are therefore located within a regionally identified Intensification Area. Through the ROP, Intensification Areas are intended to support higher, transit-oriented densities. The continued operation of the subject lands for the existing uses enhances the viability of transit use in the Uptown Area, while also allowing local residents to continue to frequent businesses in this compact, mixed-use area of Uptown Burlington. Allowing time for the applicant to contemplate the future of development of these lands, possibly at higher intensities than currently exist, would assist in meeting the intent of the ROP policy direction for Intensification Areas. Planning Staff feel that the application for a TUB is consistent with the ROP policies for the Urban Area and Intensification Areas.

City of Burlington Official Plan

The subject lands are located in the Uptown Mixed Use Centre of Burlington, as identified on Schedule F of the City's Official Plan. Planning and development in the Uptown Mixed Use Centre area is focused primarily around the intersection of Appleby Line and Upper Middle Road, with the intensity of development decreasing with distance from this intersection. The area is to develop as a secondary development node to Downtown Burlington, with a range and mix of uses with urban attributes. Development of the Uptown Mixed Use Centre area is anticipated to be built out in phases, and as such, some sites may not achieve the fullest intensity of use permitted by the underlying land use designations. Part III, Section 5.6.3 c) provides policy direction for a pedestrian system within the Uptown Mixed Use Centre area. It specifies that a well-defined pedestrian walkway system shall be required linking each lot or block within the Uptown Mixed Use Centre area designations, linking buildings, adjacent sites, and public streets with transit routes.

The subject lands are designated as Uptown Employment on Schedule F, Land Use Plan – Uptown Mixed Use Centre, which, according to policy 5.6.7 a), permits limited retail and service commercial uses, industrial uses, office uses, hospitality uses, as well as recreational and entertainment uses. Policy 5.6.7 b) specifies that retail and service

commercial uses are required to be located at grade or below grade in buildings 3,000m² or greater which contain additional permitted uses. The intent of this policy is to require a minimum building size that could accommodate a mix of employment and other uses, including limited retail and service commercial. While the total existing floor areas for the two buildings on the site do not meet the requirements for providing retail and service commercial uses, they are existing buildings, legally constructed by way of a building permit with active tenants and well utilized by the Uptown community.

The application for the TUB meets the intent of the Official Plan policy for the development of the Uptown Mixed Use Centre, since the policy acknowledges that the development of the area will occur in phases, with some sites not being developed to their maximum intensity from the outset. The applicant has requested the TUB to allow for additional time to consider development options for the subject lands and wishes to retain the existing function of the plaza in the meantime. With the understanding that future development on this site may take additional time, Planning Staff have recommended that the applicant be required to complete the pedestrian linkage on the north side of the property along Ironstone Drive in order to complete the pedestrian walkway system for this site and to adjacent lands. This latter requirement will ensure that the pedestrian system policy for this immediate area of Uptown is achieved.

City of Burlington Adopted Official Plan, 2018

The City's proposed New Official Plan was adopted by Council on April 26, 2018 and has been developed to reflect the opportunities and challenges facing the City as it continues to evolve. Halton Region has identified areas of non-conformity, and as such, the adopted Official Plan will be subject to additional review and revision prior to its approval. Further, City Council has directed a new staff review and public engagement process to consider potential modifications, including a review of height and density provisions. As a result, no weight is placed on the policies of the adopted Official Plan in the review of this application at this time.

Given potential policy changes for the subject lands, the applicant is requesting additional time to consider the future development of the property. The TUB would allow the existing uses to continue to operate as permitted uses while the future development of the area is determined.

City of Burlington Zoning By-law

The subject property is zoned Uptown Employment (UE) in the City of Burlington's Zoning By-law No. 2020. The UE zone permits the following uses: office, community, hospitality, industrial (as per the GE2 zone), recreation and entertainment, and limited retail and service commercial. The small portion of land acquired from the Burlington

Fire Station is zoned General Employment (GE1). Only the lands zoned UE are subject to the request for a TUB.

As previously noted, the applicant received approval for minor variances in 2014 for the development of the first two phases of the site. The approved variances are attached to this report as Appendix C. These variances were conditional on the applicant receiving a zoning certificate and building permit for the Phase 3 office building by March 15, 2019. These variances have lapsed and application for a TUB has been made in order to recognize the existing retail and service commercial uses on the property as legal uses until the Phase 3 office/employment uses are initiated on site, or the site undergoes a comprehensive redevelopment.

Staff have reviewed the application for a TUB in reference to the minor variances approved in 2014 to ensure that the existing activity on the site is appropriately recognized. Planning Staff have reviewed the site with respect to the existing uses and have not included regulations related to the previously proposed 4-storey office building. Any future construction will be required to receive appropriate planning approvals prior to development. The buildings that are present on the subject lands were legally constructed with a city-issued building permit, therefore aspects of the site related to the built form are not required to be recognized through the TUB.

The parking provided on the site is comprised of 282 spaces, with 10 accessible parking spaces. The Retail Centre parking rate of 5.25 spaces per 100m² of Gross Floor Area (GFA) would apply to the existing development of the property. Based on the approximate GFA of the buildings, the required parking rate is 227 parking spaces. The parking currently provided on the site exceeds the required parking for the existing uses and therefore does not need to be recognized through the TUB. Staff have included a notation to the by-law to continue to allow the two existing outdoor patios associated with two existing standard restaurants to have 0 additional parking spaces, whereas the by-law would normally require 1 space per 4 persons capacity on the patio. The existing parking provided on site is capable of accommodating parking potentially generated from the seasonal outdoor patios.

Staff recognized that there was a minor discrepancy in the landscape area separator between the parking areas recognized in the 2014 variances, which permitted a 2.6m landscape area, whereas the actual width of this landscape area is 2.3m according to the most recent as-built drawings. The TUB allows a 2.3m landscape area between parking areas of 150 spaces or more. The existing floor areas of the Phase 1 and Phase 2 buildings, based on the approved Zoning Clearances for the existing uses, are 2,044.5m² and 2988.3m² respectively. Through the TUB, the continued uses will be supported by allowing retail and service commercial uses on the ground floor of the two existing buildings, each with floor area that is less than 3000m², whereas the Zoning By-law allows these uses only on the ground floor and below grade floors in buildings having a minimum floor area of 3000m².

The property is zoned for employment uses by the UE zone. Therefore, in order to set a limit to the amount of retail and service commercial uses permitted on the site, Staff have proposed a maximum of 74% of the combined total floor area in both buildings for these uses. By limiting the amount of floor area that can be used on the site for retail and service commercial uses, the general intent of ensuring a portion of the lands for employment uses has been maintained. A copy of the draft TUB is attached to this report as Appendix D.

Financial Matters:

In accordance with the Development Application Fee Schedule, all fees determined have been received.

Technical Review:

City of Burlington – Site Engineering

Site Engineering staff have commented that they continue to hold full securities for the site under Site Plan file number 535-05/06. One of the conditions of approval was to provide a 1.5 m sidewalk along the entire frontage of the site. This was approved under the 2006 application and is still outstanding. The developer has asked for relief of this condition until the final phase is complete and the sidewalk will be installed at that time. Securities will be held in full until the completion of the sidewalk.

Whereas the final phase of the development of the subject lands was originally intended to be initiated by March of 2019, including site works such as sidewalk connections, Planning Staff recommend that the applicant be required to complete the sidewalk connection on Ironstone Drive by the end of the 2019 construction season. If the sidewalk is not complete, the collected securities may be used to complete the sidewalk connection.

City of Burlington – Transportation Planning

Transportation Planning Staff have provided comment that they have no concerns with the application for the TUB application.

Halton Region

Halton Region has reviewed the application for TUB and have provided no objections to the application.

Parks and Open Space & Landscaping

Both the Landscaping and the Parks and Open Space departments of Capital Works have provided no objections to this application.

Burlington Transit

Burlington Transit has no objections to the application provided there are no changes to the location of the existing bus stop and shelter in front of the property on Appleby Line.

BEDC

BEDC has expressed support of this application for a TUB for the site.

Public Engagement Matters:

Public Circulation

The application was subject to the standard circulation requirements. A public notice and request for comments was circulated in February 2019 to 604 surrounding property owners/tenants. A public notice sign was placed on the property facing Appleby Line which provides details about the application. All studies and supporting materials were posted on the City's website at www.burlington.ca/1900Appleby.

Public Comments

Since the public circulation was issued in February 2019, Planning Staff have received correspondence from 7 members of the public regarding the proposed Temporary Use By-law. The public comments that were received are included as Appendix E to this report.

The general themes expressed in the comments are as follows:

Public Comment	Staff Response
Would like to see the use of the plaza continue	The Temporary Use By-law would allow the existing uses to continue for a period of three years, after which an extension for an additional three years may be granted. This will ensure the continuity of use on this site while the development policies of the Uptown area are being considered.
Parking is at a premium	The existing paved parking on the site exceeds the Zoning By-law requirements for the parking rate associated with a Retail Centre.
Plaza is too auto-oriented	The parking provided on the site exceeds the required parking rate in the Zoning By-law, due to the original

Public Comment	Staff Response
	<p>proposal including the 4 storey office building. The office building has not been constructed, and as such the site is over-supplied with parking. No new parking areas are proposed through this application.</p> <p>In order to ensure a safer pedestrian experience, Planning Staff are recommending that the applicant complete the sidewalk connection on Ironstone Drive. The City continues to hold full securities for the development until all site-works are completed to the satisfaction of the City.</p>
Development should not have been phased	<p>The phasing of development on this site has led to a situation where there is currently more retail and service commercial use on site than would normally be permitted in the Uptown Employment zone. Future development of the subject lands will require planning approvals in compliance with the policies of the Official Plan and the regulations of the Zoning By-law.</p>

Conclusion:

Planning Staff recommend approval of the Temporary Use By-law for the subject land to recognize the existing uses of the subject lands for a period of time not to exceed 3 years from the date of passing of the by-law. Approval of this application would allow the existing plaza to continue to operate legally under the regulations of the Zoning By-law, with prescribed limits on the amount of floor area permitted for retail and service commercial uses.

The continued operation of the existing plaza during the period of time of the Temporary Use By-law will provide amenities to the Uptown Mixed Use Centre area until the site can be more comprehensively developed. In the interim, Planning staff recommend that the sidewalk connection along Ironstone Drive be completed to ensure a continuous pedestrian network surrounding the site. The request for a Temporary Use By-law for this site can be considered generally consistent with the PPS, and conforms to provincial, regional and local planning policies. Planning staff are recommending approval of a Temporary Use By-law for a period of time not to exceed three years from the date of by-law passing.

Respectfully submitted,

Lauren Vraets MCIP, RPP

Planner II

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Appendices:

- A. Location/Zoning Sketch
- B. Phasing Sketch
- C. 2014 Minor Variance Decision
- D. Draft Temporary Use By-law
- E. Public Comments

Notifications:

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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.