



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

TO: Community Planning, Regulation & Mobility Cttee.

FROM: Community Planning Department

Report Number: PL-57-22

Wards Affected: 2

File Numbers: 560-01

Date to Committee: July 5, 2022

Date to Council: July 12, 2022

Recommendation:

Approve an amendment to Zoning By-Law 2020 to extend the temporary use to permit entertainment uses on outdoor patios in the downtown, with a timeframe not to exceed three years, as recommended by staff in Appendix A of community planning department report PL-57-22.

PURPOSE:

The purpose of this report is to provide an update on the Temporary Use By-Law to permit entertainment uses on patios Downtown, which was approved in 2016, and later extended in 2019. On July 15, 2022, the three years of the Temporary Use By-Law will expire. This report recommends an extension of three years to the Temporary Use By-Law.

Vision to Focus Alignment:

This report relates to the following focus areas of the 2018-2022 Burlington's Plan: From Vision to Focus.

- Increase economic prosperity and community responsive city growth

Additionally, the purpose of this report is to address goals contained within the Core Commitment: Downtown Vision and Action Plan.

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 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".

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) 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 in 2016. 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 uses between the hours of 12:00 pm until 10:00 pm;
- Prohibiting the outdoor entertainment uses after 6:00 pm 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); and,
- The outdoor entertainment 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. The initial Temporary Use By-law was extended for another 3-year term in July 2019, with modifications to remove the condition prohibiting the operation of any electronic device intended to amplify sound. The permissions and conditions of the current Temporary Use By-law are set to expire on July 15, 2022. To date, the program has been well received by surrounding businesses and residents.

The extension to the Temporary Use By-Law will continue to permit live music (entertainment) uses subject to the same conditions until July 2025. This extension will allow such uses to be permitted in the downtown, with expansion city wide to be considered as part of a comprehensive approach to permanently allowing patios with entertainment as part of a city-wide outdoor patio program, as contained in staff directions SD-31-21, SD-32-21, SD-33-21 and SD-34-21, which were carried by Council on November 23, 2021. Information on these directions can be found under Item 12.3(h):

<https://burlingtonpublishing.escribemeetings.com/Meeting.aspx?Id=81f00a97-875a-47a8-8bdd-78e534f1f725&Agenda=PostMinutes&lang=English&Item=12&Tab=attachments>

Financial Matters:

Not applicable.

Climate Implications

Not applicable.

Engagement Matters:

Pursuant to Council Motion CPRM-07-21 of November 23, 2021, it was requested that staff report to Council with options and recommendations, outlining a plan and process for moving forward with a permanent city-wide outdoor patio program. It is anticipated that this work will be completed and staff will be reporting to Council in Q1 2023.

As part of this process, there will be significant stakeholder engagement and it is anticipated that a permanent outdoor patio program will incorporate permissions for permitting entertainment uses on patios.

Conclusion:

The pilot program has been largely successful in the Downtown. Staff recommends that the program be extended for another three years and subsequently be considered as part of the permanent city-wide outdoor patio program review.

Respectfully submitted,

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Appendices:

- A. Draft Temporary Use By-law

Notifications:

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Report Approval:

All reports are reviewed and/or approved by Department Director, the Chief Financial Officer and the Executive Director of Legal Services & Corporation Counsel.