

Authority: Item 9, Economic Development
and Planning Committee
Report 09-018 (PED09256)
CM: September 30, 2009

Bill No. 210

CITY OF HAMILTON

BY-LAW NO. 09-210

To Amend Zoning By-law 87-57 (Ancaster), Zoning By-law 3581-86 (Dundas), Zoning By-law 90-145-Z (Flamborough), Zoning By-law 464 (Glanbrook), Zoning By-law 6593 (Hamilton), and Zoning By-law 3692-92 (Stoney Creek), City of Hamilton Comprehensive Zoning By-law 05-200 Respecting Outdoor Commercial Patios

WHEREAS the City of Hamilton Act, 1999, Statutes of Ontario, 1999 Chap. 14, Sch. C. did incorporate, as of January 1st, 2001, the municipality "City of Hamilton";

AND WHEREAS the City of Hamilton is the successor to certain area municipalities, including the former area municipality known as "The Corporation of the Town of Ancaster", "The Corporation of the Town of Dundas", "The Corporation of the Town of Flamborough", "The Corporation of the Township of Glanbrook", "The Corporation of the City of Hamilton", and "The Corporation of the City of Stoney Creek", and is the successor to the former Regional Municipality, namely, The Regional Municipality of Hamilton-Wentworth;

AND WHEREAS the City of Hamilton Act, 1999, provides that the Zoning By-laws of the former area municipalities continue in force in the City of Hamilton until subsequently amended or repealed by the Council of the City of Hamilton;

AND WHEREAS Zoning By-law No. 87-57 (Ancaster) was enacted on the 22nd day of June, 1987, and approved by the Ontario Municipal Board on the 23rd day of January, 1989;

AND WHEREAS Zoning By-law 3581-86 (Dundas) was enacted on the 22nd day of May, 1986, and approved by the Ontario Municipal Board on the 10th day of May, 1988;

AND WHEREAS the Council of the Corporation of the Town of Flamborough passed Zoning By-law No. 90-145-Z (Flamborough) on the 5th day of November, 1990, which by-law was approved by the Ontario Municipal Board by Order dated the 21st day of December, 1992;

By-law Respecting Outdoor Commercial Patios

Page 2 of 12

AND WHEREAS Zoning By-law No. 464 (Glanbrook) was enacted on the 16th day of March, 1992, and approved by the Ontario Municipal Board on the 31st day of May 1993;

AND WHEREAS Zoning By-law No. 6593 (Hamilton) was enacted on the 25th day of July, 1950;

AND WHEREAS Zoning By-law No. 3692-92 (Stoney Creek) was enacted on the 8th day of December, 1992, and approved by the Ontario Municipal Board on the 31st day of May, 1994;

AND WHEREAS the first stage of the Zoning By-law, being 05-200, came into force on May 25, 2005;

AND WHEREAS this By-law creates a consistent approach to the regulation of Outdoor Commercial Patios within the City of Hamilton;

AND WHEREAS this By-law is in conformity with the Official Plan of the City of Hamilton (the Official Plan of the former Town of Ancaster, the Official Plan of the former Town of Dundas, the Official Plan of the former Town of Flamborough, the Official Plan of the former Township of Glanbrook, the Official Plan of the former City of Hamilton, and the Official Plan of the former City of Stoney Creek).

NOW THEREFORE the Council of the City of Hamilton enacts as follows:

Town of Ancaster

1. That SECTION 3: DEFINITIONS of Zoning By-law No.87-57 (former Town of Ancaster), hereby amended by adding the following definition:

“3.152 “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.“

- 2 That SECTION 7: GENERAL PROVISIONS of Zoning By-law No. 87-57 (former Town of Ancaster), is hereby amended by adding the following regulation:

“7.29 Outdoor Commercial Patios

Notwithstanding any provisions of this By-law, every Outdoor Commercial Patio shall comply with the following:

By-law Respecting Outdoor Commercial Patios

Page 3 of 12

a) Design Requirements

Outdoor Commercial Patios shall be designed and used to accommodate seating of customers

b) Seating Capacity Requirements

i) An Outdoor Commercial Patio shall be limited to a seated capacity of a minimum of 1.10 square metres of patio area per person.

ii) Maximum seated capacity shall be inclusive of all outdoor areas and portions of the patio that cross property lines such as road allowances.

c) Location Requirements:

i) Except as provided in Subsection b) (ii) below, no Outdoor Commercial Patio shall be permitted on a lot where any lot line abuts a Residential Zone or where such lot is separated from a Residential Zone by a laneway; and,

ii) Where only the rear lot line abuts a Residential Zone or the lot is separated from the Residential Zone by a laneway, an Outdoor Commercial Patio shall only be permitted in the front yard.

d) Prohibition of Commercial Entertainment and Recreation:

That portion of a lot on which the Outdoor Commercial Patio is permitted shall not be used for commercial entertainment or commercial recreation including live or recorded music or dance facilities.”

Town of Dundas

3. That SECTION 3: DEFINITIONS of Zoning By-law 3581-86 (former Town of Dundas), is hereby amended by adding the following definition:

“3.2.103 **OUTDOOR COMMERCIAL PATIO**

Means 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.”

By-law Respecting Outdoor Commercial Patios

Page 4 of 12

4. That SECTION 6: GENERAL REGULATIONS of Zoning By-law No. 3581-86 (former Town of Dundas), is hereby amended by adding the following regulation:

“6.25 OUTDOOR COMMERCIAL PATIOS

Notwithstanding any provisions of this By-law, every Outdoor Commercial Patio 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

i) An Outdoor Commercial Patio shall be limited to a seated capacity of a minimum of 1.10 square metres of patio area per person.

ii) Maximum seated capacity shall be inclusive of all outdoor areas and portions of the patio that cross property lines such as road allowances.

c) Location Requirements:

i) Except as provided in Subsection b) (ii) below, no Outdoor Commercial Patio shall be permitted on a lot where any lot line abuts a Residential Zone or where such lot is separated from a Residential Zone by a laneway; and,

ii) Where only the rear lot line abuts a Residential Zone or the lot is separated from the Residential Zone by a laneway, an Outdoor Commercial Patio shall only be permitted in the front yard.

d) Prohibition of Commercial Entertainment and Recreation:

That portion of a lot on which the Outdoor Commercial Patio is permitted shall not be used for commercial entertainment or commercial recreation including live or recorded music or dance facilities.”

By-law Respecting Outdoor Commercial Patios

Page 5 of 12

Town of Flamborough

5. That SECTION 3 – DEFINITIONS, of Zoning By-law 90-145-Z (former Town of Flamborough), is hereby amended by adding 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.”

6. That SECTION 5 – GENERAL PROVISIONS, of Zoning By-law 90-145-Z (former Town of Flamborough), is hereby amended by adding the following regulation:

“5.37 OUTDOOR COMMERCIAL PATIOS

Notwithstanding any provisions of this By-law, every Outdoor Commercial Patio 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

i) An Outdoor Commercial Patio shall be limited to a seated capacity of a minimum of 1.10 square metres of patio area per person.

ii) Maximum seated capacity shall be inclusive of all outdoor areas and portions of the patio that cross property lines such as road allowances.

c) Location Requirements:

i) Except as provided in Subsection b) (ii) below, no Outdoor Commercial Patio shall be permitted on a lot where any lot line abuts a Residential Zone or where such lot is separated from a Residential Zone by a laneway; and,

ii) Where only the rear lot line abuts a Residential Zone or the lot is separated from the Residential Zone by a

By-law Respecting Outdoor Commercial Patios

Page 6 of 12

laneway, an outdoor commercial patio shall only be permitted in the front yard.

d) **Prohibition of Commercial Entertainment and Recreation:**

That portion of a lot on which the Outdoor Commercial Patio is permitted shall not be used for commercial entertainment or commercial recreation including live or recorded music or dance facilities.”

Township of Glanbrook

7. That SECTION 4: DEFINITIONS of Zoning By-law 464 (former Township of Glanbrook), is amended by adding the following definition:

“OUTDOOR PATIO RESTAURANTS”

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.”

8. That SECTION 25: GENERAL COMMERCIAL “C3” ZONE of Zoning By-law 464 (former Township of Glanbrook), is hereby amended as follows:

- a) SECTION 25.2 – PERMITTED USES, is hereby amended by deleting the following subsection:

“(o) **Accessory Outdoor Patio Restaurants**

An outdoor patio is a permitted accessory use to any restaurant subject to the following provisions:

- (i) No part of the outdoor patio restaurant shall be used as a place of entertainment for the purpose of providing entertainment or amusement including live or recorded music, dance facilities, theatrical performances, video games, film presentations, video screens, television nor any other similar activities;
- (ii) No outdoor patio restaurant shall be located in any yard abutting land zoned Residential in this By-law or where the abutting land is used for residential purposes;
- (iii) No outdoor patio restaurant shall be located in any yard abutting a street if a Residential Zone is located

By-law Respecting Outdoor Commercial Patios

Page 7 of 12

on the opposite side of said street, unless the patio restaurant is setback a minimum distance of 30 metres (100 feet) from the residential property line; and

- (iv) The seating capacity of the outdoor patio restaurant shall not exceed fifty percent (50%) of the seating capacity of the restaurant with which the patio is associated, and in any event the maximum number of people that may be accommodated in the outdoor patio shall be 50 persons.”

- 9. That SECTION 7: GENERAL PROVISIONS FOR ALL ZONES of Zoning By-law 464 (former Township of Glanbrook), is hereby amended by adding the following regulation:

“7.42 Outdoor Patio Restaurants

Notwithstanding any provisions of this By-law, every Outdoor Patio Restaurant shall comply with the following:

- a) Design Requirements

Outdoor Patio Restaurants shall be designed and used to accommodate seating of customers

- b) Seating Capacity Requirements

- i) An Outdoor Patio Restaurant shall be limited to a seated capacity of a minimum of 1.10 square metres of patio area per person.

- ii) Maximum seated capacity shall be inclusive of all outdoor areas and portions of the patio that cross property lines such as road allowances.

- c) Location Requirements:

- i) Except as provided in Subsection b) (ii) below, no Outdoor Patio Restaurant shall be permitted on a lot where any lot line abuts a Residential Zone or where such lot is separated from a Residential Zone by a laneway; and,

- ii) Where only the rear lot line abuts a Residential Zone or the lot is separated from the Residential Zone by a

By-law Respecting Outdoor Commercial Patios

Page 8 of 12

laneway, an outdoor commercial patio shall only be permitted in the front yard.

d) Prohibition of Commercial Entertainment and Recreation:

That portion of a lot on which the Outdoor Patio Restaurant is permitted shall not be used for commercial entertainment or commercial recreation including live or recorded music or dance facilities.”

City of Hamilton

9. That Section 18. (11) SPECIAL REQUIREMENTS FOR OUTDOOR PATIOS, of Zoning By-law No. 6593 (former City of Hamilton), is hereby amended by deleting the following regulation:

“18 (11) Notwithstanding any of the provisions of the By-law every outdoor patio shall comply with the following,

(a) Seating Capacity Requirements:

1. No outdoor patio shall provide for,
 - A. more than 50% of the seating accommodation permitted under the Liquor Licence Act to the restaurant or tavern with which the outdoor patio is associated, or
 - B. seating accommodation for more than 50 persons,

Whichever is the greater;

(b) Location Requirements:

1. Except as provided in paragraph 2, no outdoor patio shall be located where any lot line adjoins a residential district or is separated from a residential district by a lane or alley.
2. Where only the rear lot line adjoins a residential district or is separated from the residential district by a lane or alley, an outdoor patio shall not be prohibited in the front yard.

By-law Respecting Outdoor Commercial Patios

Page 9 of 12

3. Where a lot adjoins a residential district or is separated from the residential district by a lane or alley, no outdoor patio shall be located above the elevation of the floor of the first storey of the principal building.”

And replacing it with the following:

“18. (11) SPECIAL REQUIREMENTS FOR OUTDOOR PATIOS

Notwithstanding any provisions of this By-law, every Outdoor Patio shall comply with the following:

- a) Design Requirements
Outdoor Patios shall be designed and used to accommodate seating of customers
- b) Seating Capacity Requirements
 - i) An Outdoor Patio shall be limited to a seated capacity of a minimum of 1.10 square metres of patio area per person.
 - ii) Maximum seated capacity shall be inclusive of all outdoor areas and portions of the patio that cross property lines such as road allowances.
- 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 or where such lot is separated from a Residential Zone by a laneway; and,
 - ii) Where only the rear lot line abuts a Residential Zone or the lot is separated from the Residential Zone by a laneway, an Outdoor Patio shall only 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.”

By-law Respecting Outdoor Commercial Patios

Page 10 of 12

City of Stoney Creek

10. That PART 2 – DEFINITIONS, of Zoning By-law 3692-92 (former City of Stoney Creek), is hereby amended by deleting the following definition:

“Restaurant – Outdoor Patio

Means an outdoor area used on a seasonal basis accessory to a restaurant where the outdoor patio is permitted in the respective zone, which outdoor patio restaurant provides seating accommodation as well as meals or refreshments for the public for consumption on the premises and located entirely on the same lot as the restaurant. An outdoor patio restaurant may be covered by a roof or roof structure.”

and replacing it with the following:

“Restaurant – Outdoor 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.”

11. That PART 8 – COMMERCIAL ZONES, of Zoning By-law 3692-92 (former City of Stoney Creek), is hereby amended by deleting the following regulation:

“8.1.7 Outdoor Patio Restaurants

For any outdoor patio restaurant within any commercial zone, the following provisions shall apply to said outdoor patio restaurant:

- (a) No part of the outdoor patio restaurant shall be used as a place of entertainment for the purpose of providing entertainment or amusement including live or recorded music, dance facilities, theatrical performances, video games, film presentations, video screens or televisions.
- (b) No outdoor patio restaurant shall be located in any yard abutting a residential zone.
- (c) No outdoor patio restaurant shall be located in any yard abutting a street if a residential zone is located on the opposite side of said street, unless the patio restaurant is set back a minimum distance of 30 metres from the residential property line.

By-law Respecting Outdoor Commercial Patios

Page 11 of 12

- (d) The seating capacity of the outdoor patio restaurant shall not exceed 50 percent of the seating capacity of the restaurant with which the patio is associated in any event the maximum number of people that may be accommodated in the outdoor patio shall be 50.

and replacing it with the following:

“8.1.7 Outdoor Patio Restaurants

Notwithstanding any provisions of this By-law, every Outdoor Patio Restaurant shall comply with the following:

- a) **Design Requirements**

Outdoor Patio Restaurants shall be designed and used to accommodate seating of customers

- b) **Seating Capacity Requirements**

- i) An Outdoor Patio Restaurant shall be limited to a seated capacity of a minimum of 1.10 square metres of patio area per person.
- ii) Maximum seated capacity shall be inclusive of all outdoor areas and portions of the patio that cross property lines such as road allowances.

- c) **Location Requirements:**

- i) Except as provided in Subsection b) (ii) below, no Outdoor Patio Restaurant shall be permitted on a lot where any lot line abuts a Residential Zone or where such lot is separated from a Residential Zone by a laneway; and,
- ii) Where only the rear lot line abuts a Residential Zone or the lot is separated from the Residential Zone by a laneway, an Outdoor Patio Restaurant shall only be permitted in the front yard.

- d) **Prohibition of Commercial Entertainment and Recreation:**

That portion of a lot on which the Outdoor Patio Restaurant is permitted shall not be used for commercial entertainment or commercial recreation including live or recorded music or dance facilities.”

By-law Respecting Outdoor Commercial Patios

Page 12 of 12

City of Hamilton Comprehensive Zoning By-law

12. That Section 4: GENERAL PROVISIONS of By-law 05-200 is amended by deleting the following regulation:

“4.20 a) Seating Capacity Requirements:

No outdoor patio shall provide for:

- i) More than 50% of the seating accommodation permitted under the Liquor Licence Act to the restaurant with which the outdoor commercial patio is associated; or,
- ii) Seating accommodation for more than 50 persons.

whichever is the greater.”

13. That Section 4: GENERAL PROVISIONS of By-law 05-200 is amended by adding the following regulations:

“4.20 a) Design Requirements

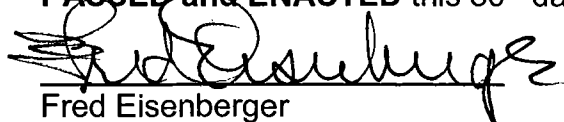
Outdoor Commercial Patios shall be designed and used to accommodate seating of customers.

b) Seating Capacity Requirements

- i) An Outdoor Commercial Patio shall be limited to a seated capacity of a minimum of 1.10 square metres of patio area per person.
- ii) Maximum seated capacity shall be inclusive of all outdoor areas and portions of the patio that cross property lines such as road allowances.”

7. That the Clerk is hereby authorized and directed to proceed with the giving of notice of passing of this By-law in accordance with the Planning Act.

PASSED and ENACTED this 30th day of September, 2009.



Fred Eisenberger
Mayor



Kevin C. Christenson
City Clerk