



**STAFF REPORT  
ACTION REQUIRED**

**Queen Street West (between Roncesvalles Avenue and Dufferin Street) – Restaurant Study Zoning By-law Appeal Settlement Offer**

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| <b>Date:</b>             | July 2, 2014  |
| <b>To:</b>               | City Council  |
| <b>From:</b>             | City Solicitor and Chief Planner and Executive Director, City Planning Division |
| <b>Ward:</b>             | Ward 14 – Parkdale-High Park  |
| <b>Reference Number:</b> | 11 232412 STE 14 OZ   |

**SUMMARY**

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The purpose of this report is to present a settlement offer received from the Ontario Restaurant, Hotel and Motel Association ("ORHMA") in respect of their appeals to the Ontario Municipal Board of By-laws 1049-2013 and 1050-2013, enacted by City Council on July 19, 2013. These By-laws amended former City of Toronto By-law 438-86 and the new harmonized Zoning By-law 569-2013 for an area along Queen Street West from Dufferin Street to Roncesvalles Avenue. The By-laws added additional restrictions for restaurant and related uses, including a limit on the concentration of restaurants in the study area. An Interim Control By-law that prohibits new restaurants in this area remains in force as a result of the appeals.

ORHMA's offer to settle is contained in Attachment 1.

**RECOMMENDATIONS**

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The City Solicitor and Chief Planner recommend that:

1. City Council reject the settlement offer contained in Attachment 1 of this report;
2. City Council repeal Interim Control By-law 1393-2012;

3. City Council authorize the City Solicitor to consent to an adjournment of the hearing of the appeals of By-laws 1049-2013 and 1050-2013, pending input from the working group which Council has directed be established to develop better compliance with City by-laws regarding restaurants, bars and entertainment establishments, as per MM45.16, adopted by City Council on December 16, 2013;
4. City Council request the Chief Planner and City Solicitor report in the first half of 2015 on the status of and for further direction regarding the ORHMA's appeals of By-laws 1049-2013 and 1050-2013.

## **FINANCIAL IMPACT**

The recommendations in this report have no financial impact.

## **DECISION HISTORY**

At its meeting on August 25, 26 and 27, 2010, City Council directed the Chief Planner and Executive Director, City Planning, to undertake a study of restaurants on Queen Street West between Roncesvalles Avenue and Dufferin Street to determine if any additional zoning controls could be introduced to mitigate some of the negative impacts of the high concentration of restaurants and bars on this segment of Queen Street West.  
<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2010.MM52.45>

At its meeting on October 30 and 31 and November 1, 2012 City Council enacted By-law 1393-2012, an Interim Control By-law that prohibits new restaurants and related uses on Queen Street West between Dufferin Street and Roncesvalles Avenue. The Interim Control By-law also prevented the expansion of current restaurants above the ground floor.  
<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2012.MM27.18>

At its meeting on July 16, 17, 18 and 19, 2013, City Council adopted recommendations of the staff report from the Director, Community Planning, Toronto and East York District dated May 24, 2013 regarding a completed restaurant study on Queen Street West between Roncesvalles Avenue and Dufferin Street. Council enacted By-laws 1049-2013 and 1050-2013, amending the former City of Toronto By-law 438-86 as well as Harmonized By-law 569-2013, implementing new provisions related to restaurant and related uses in the restaurant study area.  
<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.TE25.3>

At its meeting on April 8, 2014, Toronto and East York Community Council received a Supplementary Report from Planning regarding their research and findings on whether By-laws 1049-2013 and 1050-2013 could be amended to restrict only licensed restaurants and bars.  
<http://www.toronto.ca/legdocs/mmis/2014/te/bgrd/backgroundfile-67737.pdf>

At its meeting on December 16, 17 and 18, 2013, City Council requested the Executive Director, Municipal Licensing and Standards, in consultation with the Alcohol and Gaming Commission of Ontario (AGCO), to form a working group to establish a framework for better compliance and enforcement of City by-laws as they relate to restaurants, bars and entertainment establishments. This motion and working group has City-wide scope and is not related to the Queen Street West Restaurant Study. <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.MM45.16>

## **ISSUE BACKGROUND**

The restrictions imposed on restaurant and related uses in By-laws 1049-2013 and 1050-2013 include the following:

- A reduction in the permitted restaurant Gross Floor Area from 400 m<sup>2</sup> to 200 m<sup>2</sup>.
- Restricting the location of restaurants to the ground floor
- Prohibiting patios associated with restaurants from locating in the rear yard or on the rooftop
- Limiting permitted accessory uses such as a stage, teletheatre gambling or any other entertainment area, to a maximum of 6%, or 12m<sup>2</sup>, of the restaurant gross floor area.
- Limiting the concentration of restaurants and bars to no more than 25% of the properties within each of the following blocks:
  - Roncesvalles Avenue to Sorauren Avenue/Beaty Avenue
  - Sorauren Avenue/Beaty Avenue to Lansdowne Avenue/Jameson Avenue
  - Lansdowne Avenue/Jameson Avenue to Brock Avenue/Connan Avenue
  - Brock Avenue/Connan Avenue to Dufferin Street

## **COMMENTS**

### **Concentration Provision**

The offer to settle proposes to remove the 25% concentration provisions in the By-laws that limit the number of restaurants in each of the four segments of the restaurant study area. All other provisions in the By-laws would remain the same.

In its report dated May 24, 2013, City Planning staff recommended that a limit be placed on the number of restaurants within all of the four identified segments of Queen Street West to address what Planning staff believe is an over-concentration of late-night drinking establishments and conflicts with nearby residents, particularly along the most easterly of the four segments identified in the study and the By-laws approved by

Council. The 25% cap applies to both licensed and unlicensed restaurants. The reason for including both licensed and unlicensed restaurants in the By-law is due to the licensing requirements of the AGCO. Restaurants and bars are defined in the same manner in all of Toronto's Zoning By-laws for the same reason. Staff did undertake extensive discussions with officials of the Alcohol and Gaming Commission (AGCO) to determine whether the By-laws could be amended to restrict only licensed restaurants and bars. Staff determined that such a distinction could not be made, in part because the City would be dependent upon a provincial agency (the AGCO) to enforce the By-law.

Planning staff also recommended a cap on the number of restaurants to protect the function of Queen Street West as a main street which serves the needs of the local community. If late night drinking establishments or restaurants which become late night drinking establishments dominate a portion of the street, that area is less vibrant during the morning hours and less able to serve the needs of a variety of residents.

Planning staff are of the opinion that the Zoning By-laws as approved by Council represent a useful and justifiable tool to deal with the conflicts which are occurring as a result of too many late night drinking establishments on Queen Street West between Roncesvalles Avenue and Dufferin Street, and do not support the elimination of the concentration caps, which are an important element of the By-laws.

### **Repeal of Interim Control By-law 1393-2012**

Interim Control By-law 1393-2012 would have expired upon Council approval of By-laws 1049-2013 and 1050-2013, which resulted from the Restaurant Study, if not for the ORHMA's appeal of those By-laws to the Ontario Municipal Board. As a result of the appeals and pursuant to subsection 38(6.1) of the *Planning Act*, the Interim Control By-law continues in effect until such time as the appeals of the above noted By-laws are resolved, unless the Interim Control By-law is repealed.

The Interim Control By-law effectively prohibits the opening of any new restaurant or related uses within the study area. Repealing the By-law would allow additional restaurants to open in two of the four areas identified as being below the 25% cap. At the OMB pre-hearing conference held on February 14, 2014, City staff argued that the extension of the Interim Control By-law was not in the public interest as Council has approved By-laws 1049-2013 and 1050-2013.

If the Interim Control By-law is repealed by Council, Toronto Building staff will apply By-laws 1049-2013 and 1050-2013 (including the concentration provisions) in the course of their completing reviews for zoning compliance until such time as the OMB makes a final determination regarding the appeals. Pursuant to subsection 34(30) of the *Planning Act*, if one or more appeals have been filed in respect of a zoning by-law, the by-law does not come into force until the appeals have been finally disposed of, whereupon the by-law, except for those parts of it repealed or amended by the OMB shall be deemed to have come into force on the day it was passed. Accordingly, until such time as any outstanding appeals are resolved, Toronto Building will apply the provisions of the by-

law, and no building permits will issue for restaurants in areas that exceed the 25% concentration limit.

Lifting the Interim Control By-law is a reasonable measure, as it will open up two of the four segments of the study area to additional restaurants (up to the 25% cap) while allowing Toronto Building staff to apply the provisions of By-laws 1049-2013 and 1050-2013 as approved by Council.

Given that Toronto Building staff would apply the provisions of By-laws 1049-2013 and 1050-2013 pending the outcome of the ORHMA's appeals, staff are satisfied that it would be reasonable to consent to an adjournment of the appeals in order to allow the working group established at the December 16, 17 and 18, 2013 City Council meeting by way of Member Motion 45.16 to report back on its findings and recommendations.

## **CONTACT**

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## **SIGNATURE**

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Anna Kinastowski  
City Solicitor

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Jennifer Keesmaat, MES, MCIP, RPP  
Chief Planner and Executive Director  
City Planning Division

## **ATTACHMENTS**

Attachment 1: Without prejudice offer to settle.

## Attachment 1: Offer to Settle

**John Nunziata**  
**Barrister & Solicitor**  
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**Toronto, Ontario M8X 2N1**  
**(416) 909-1476**

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### WITHOUT PREJUDICE

Mr. Mark Crawford and Ms. Sarah O'Connor  
City Solicitors  
City of Toronto  
100 Queen Street West  
Toronto, Ontario M5H 2N2

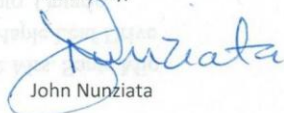
Mr. Crawford and Ms. O'Connor

Re: Offer to Settle - OMB Queen West Restaurant Study By-law Appeal

Further to our discussions at the OMB Mediation meeting yesterday I have instructions from my client to withdraw their OMB appeal of By-law No. 1049-2013 and By-law No. 1050-2013 on condition that the City agrees to delete Section 1.(4) of By-law 1049-2013 and Section 2.(1)A of By-law 1050-2013 (the concentration provisions of each by-law).

This will confirm your undertaking that this matter will be considered by City Council at its meeting beginning on July 7, 2013

Yours truly,



John Nunziata

**John Nunziata** BA, LL.B  
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