

Queen Street West (between Roncesvalles Avenue and Dufferin Street) – Restaurant Study – Supplementary Report

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| Date: | March 21, 2014 |
| To: | Toronto and East York Community Council |
| From: | Director, Community Planning, Toronto and East York District |
| Wards: | Ward 14 – Parkdale-High Park |
| Reference Number: | 11-232412 STE 14 OZ |

SUMMARY

The purpose of this report is to provide information on staff’s findings regarding the feasibility of restricting the concentration of licensed restaurants and bars on Queen Street West between Roncesvalles Avenue and Dufferin Street. Staff do not recommend that City Council amend the By-laws currently before the OMB to restrict the concentration of licensed establishments on Queen Street West at this time. Instead, pending the OMB decision, the existing By-laws would come into force and effect with the current broader restriction on bars and restaurants (licensed and unlicensed). Staff will report back to Council (at a future date) on the effectiveness of this type of By-law in helping to control land use conflicts.

RECOMMENDATIONS

The City Planning Division recommends that:

1. Toronto and East York Community Council receive for information the report (March 21, 2014) from the Director, Community Planning, Toronto and East York District, entitled "Queen Street West (between Roncesvalles Avenue and Dufferin Street) - Restaurant Study - Supplementary Report".



Financial Impact

The recommendations in this report have no financial impact.

DECISION HISTORY

At its meeting on July 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. The staff report and accompanying By-laws can be found at:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.TE25.3>

The main recommendation of this report was to adopt amendments to the former City of Toronto By-law 438-86 as well as Harmonized Zoning By-law 569-2013 implementing new provisions related to restaurant and bar uses in this study area. These provisions included the following:

- A reduction in the permitted restaurant Gross Floor Area from 400 m² to 200 m².
- 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 12m², 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:
 - o Roncesvalles Avenue to Sorauren Avenue/Beaty Avenue
 - o Sorauren Avenue/Beaty Avenue to Lansdowne Avenue/Jameson Avenue
 - o Lansdowne Avenue/Jameson Avenue to Brock Avenue/Connan Avenue
 - o Brock Avenue/Connan Avenue to Dufferin Street

The remaining recommendations in the staff report pertained to further study of the restrictions related to the concentration of restaurants and bars including:

- Staff continue to investigate means of restricting the concentration of licensed restaurants and bars on Queen Street West and that the Director, Community Planning, Toronto and East York District report back to Toronto and East York Community Council in the first quarter of 2014 on whether it is feasible to enact such restrictions and the regulatory and administrative changes necessary to effectively implement them.

- If it is feasible for the City of Toronto to restrict the concentration of licensed restaurants and bars on Queen Street West, the Director, Community Planning, Toronto and East York District report back to Toronto and East York Community Council on appropriate amendments to the zoning by-laws implemented for the Study Area including limits on the concentration provisions for licensed establishments only.
- Within three years of the concentration provisions of the (study) by-laws coming into force and effect, the Director, Community Planning, Toronto and East York District, report back to Toronto and East York Community Council on the impact of the concentration provisions of the by-laws.

The two by-laws adopted by City Council, By-law 1049-2013 and By-law 1050-2013 are currently under appeal before the Ontario Municipal Board. A pre-hearing to explore the issues and determine the date of the hearing was held on February 14, 2014. A five-day hearing has been scheduled for the week of August 11, 2014. A one-day mediation hearing has been scheduled for June 23, 2014 to identify and scope the issues for the hearing.

ISSUE BACKGROUND

Issues related to the concentration of bars and restaurants, particularly licensed restaurants that morph into late night drinking establishments, have been recognized for some time. These concerns have prompted numerous motions at City Council directing staff to conduct studies of main streets with a high concentration of restaurants to investigate whether new zoning provisions could be implemented to mitigate their impact. On the one hand, there is concern that such a high concentration of restaurants can displace other main street uses which meet the daily needs of area residents. On the other hand, there is an even greater concern related to licensed restaurants that operate like bars and bars which, when clustered, create a potential land use conflict with the adjacent neighbourhood. Quite often, these take on entertainment area characteristics including noise, public nuisances and traffic. Examples of previous studies include: Queen Street West between Dovercourt Road and Gladstone Avenue, Ossington Avenue between Queen Street West and Dundas Street West and College Street between Bathurst Street and Ossington Avenue. These studies have typically resulted in a reduction in the permitted restaurant size, limitations on where within the building a restaurant can locate and the number of restaurants in one building.

This report provides information regarding the current status of staff's investigation into means of restricting the concentration of only licensed bars and restaurants in the Study Area. This work included meetings with the Deputy Director, Litigation and Legal Services of the AGCO, AGCO licensing staff and a number of representatives of City Legal Services, City Planning, Municipal Licensing and Standards and Toronto Building to discuss the legislative restrictions, if any, on the City implementing a concentration by-

law focusing on liquor licenses. The discussion also considered administrative challenges to the effective implementation of such a by-law.

COMMENTS

The AGCO's legal counsel was of the opinion that there are no jurisdictional concerns with the City implementing a by-law limiting the concentration of only licensed restaurants and bars. Generally speaking, the role of the AGCO is to approve liquor license applications and attach conditions as determined on a risk-based assessment of the applicant and the type of establishment being applied for. However, before a license is actually issued, the AGCO looks to the municipality to provide clearances related to health standards, fire code compliance, zoning by-law compliance and building permit and business licence status. If clearance is not given, the liquor license is not issued. Therefore, if a concentration by-law was in place limiting the number of permitted licensed bars and restaurants, should a liquor license application be applied for in an area that is already at its maximum concentration capacity, a zoning clearance certificate would not be issued and in turn the AGCO would be unable to issue the liquor license. Municipal Licensing and Standards will only issue a business licence once zoning clearance is received from Toronto Building.

As already noted in the May 24, 2013 staff report, there are administrative challenges in a by-law which focuses only on licensed restaurants and bars. Under the current process, Toronto Building would not be able to provide zoning clearance for a licensed establishment without being able to confirm the number of current liquor licences issued in an area specified by the by-law. The AGCO would have to create a license clearance process that runs simultaneously with the City's building permit application process. The AGCO's legal representative and Licensing staff advised City staff that the agency does not currently have the administrative capacity or process in place to provide this information effectively on an on-going basis as would be required. Toronto Building would therefore not be able to demonstrate compliance for a 'licensed eating establishment' prior to the applicant having their license granted by the AGCO.

An additional administrative challenge posed by a by-law focusing on only licensed restaurants and bars is that the *Liquor License Act* no longer distinguishes between classes of licenses and there is no principle use requirement (meaning that any business operation, not just ones related to the service of food and drink, may apply for a liquor license). Any information the AGCO is able to provide would therefore confirm the number of existing liquor licenses, but would not distinguish between the type of establishments these apply to.

Efforts by staff to explore options to narrow the focus to only licensed restaurants and bars have led to the conclusion that as the City's first concentration by-law related to restaurants and bars has already been approved by Council, it should be tested for a sufficient period of time to determine its success in mitigating the impact of the identified land use conflicts and to identify any challenges with respect to its implementation. Although the current concentration by-law applies to licensed and unlicensed

establishments alike, it will provide staff with experience in implementing such a concentration by-law. It will also serve to demonstrate whether the desired outcomes of maintaining the main street function of the street and limiting the land-use conflicts between the over-concentration of restaurant uses and adjacent residential communities have been achieved.

CONCLUSION

Staff have investigated the potential of restricting the concentration of licensed restaurants and bars by meeting with representatives of the AGCO and determined that such a restriction is theoretically possible. However, in reviewing the administration of a by-law limiting the concentration of only licensed establishments, staff do not recommend such an approach at this time. It is appropriate to allow the existing concentration By-law on Queen Street West between Roncesvalles Avenue and Dufferin Street restricting the total number of both licensed and unlicensed restaurants and bars to come into effect (pending a decision by the OMB) and to allow staff to evaluate its impact and practical implications. Staff can then report back to Council in the future on the effectiveness of this tool in helping to control land use conflicts and serve other planning objectives.

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SIGNATURE

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