TO: Public Works Committee  
Chair and Members

WARD(S) AFFECTED: WARD 2

COMMITTEE DATE: February 1, 2010

SUBJECT/REPORT NO:  
Hess Village Review - Outdoor Boulevard Café Encroachment Agreement Terminations (PW10012) - (Ward 2)

SUBMITTED BY:  
Gerry Davis, CMA  
General Manager  
Public Works Department

PREPARED BY:  
Angela Storey  
(905) 546-2424, Extension 6483

SIGNATURE:

RECOMMENDATION:

(a) That the following Outdoor Boulevard Café Agreements, which exist at the "pleasure of Council", be hereby terminated effective immediately:

<table>
<thead>
<tr>
<th>Establishment Name</th>
<th>Address</th>
<th>Original Party to the Agreement / Current Owner (Principal)</th>
<th>Date of Agreement</th>
</tr>
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<tbody>
<tr>
<td>Elixir b</td>
<td>20 Hess St</td>
<td>William H. Robinson/Paradise Lane Developments Hamilton Inc. (Douglas Dore)</td>
<td>June 25, 1986</td>
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<tr>
<td>Elixir b</td>
<td>20 Hess St</td>
<td>William Harold Robinson, Mario Joseph Cairo/Paradise Lane Developments Hamilton Inc. (Douglas Dore)</td>
<td>April 9, 1987</td>
</tr>
<tr>
<td>Funky Monkey</td>
<td>115/117 George St</td>
<td>Norman Wallace Dobell, Tynor Holdings Limited/1612422 Ontario Inc. (Dean Collett)</td>
<td>Feb. 3, 1977</td>
</tr>
</tbody>
</table>

Vision: To be the best place in Canada to raise a child, promote innovation, engage citizens and provide diverse economic opportunities.
Values: Honesty, Accountability, Innovation, Leadership, Respect, Excellence, Teamwork
(b) That the Mayor and City Clerk be authorized and directed to execute new Outdoor Boulevard Café Encroachment Agreements for the businesses within the Hess Village Review area, in a form satisfactory to the City Solicitor, as required by Report PED090127.

**EXECUTIVE SUMMARY**

On May 27, 2009, Council approved Committee of the Whole Report 09-015, through which staff was directed to terminate the existing Outdoor Boulevard Café Encroachment Agreements (the “Agreements”) in accordance with the termination provisions set out in each Agreement and to advise the parties to these Agreements that they are required to enter into new Agreements, the fees for which are to be waived in accordance with Council’s direction. Termination letters have now been sent to the respective parties to the agreements with termination dates effective December 31, 2009.

Four (4) of the nineteen (19) Agreements with the City contain clauses that the Agreements exist at the “pleasure of Council” which requires that Council bring these Agreements to an end after affording the parties to these agreements an opportunity to speak to the matter, if they so choose.

**Alternatives for Consideration - See Page 6**

It is recommended that the four (4) agreements be terminated by Council.

**FINANCIAL / STAFFING / LEGAL IMPLICATIONS**

**Financial** - Council has waived the one-time application fee for each new agreement of $1,352.19, the fee for the minor site plan approval of $730.00 and has agreed to pay for the cost of registering discharges of existing Agreements from title of $70.70 per transaction. In addition, Council has agreed to pay for the cost of registering the new Agreements on title at a cost of $70.70 per transaction. It is expected there will be seventeen (17) discharges and a maximum of sixteen (16) applications for new agreements which require the waiver of fees associated with them and the costs of registration. The approximate cost to the City of Hamilton is $36,000.

**Staffing** - The recommendations contained in this report can be completed within existing staff complement of the Operations and Waste Management Division and the Legal Services Division.

**Legal** - The recommendations were reviewed by the Legal Services Division and reflect the City’s obligation to provide the required procedural fairness to the parties to these Agreements and ensure that applicants are aware that they must enter into new Agreements.
HISTORICAL BACKGROUND

On May 27, 2009, Council approved Committee of the Whole Report 09-015, through which staff was directed to terminate the existing Outdoor Boulevard Café Encroachment Agreements (the “Agreements”) in accordance with the termination provisions set out in each Agreement. The parties to these Agreements were advised that they are required to enter into new Agreements permitting their patios to encroach on the City road allowance and that the fees for this process are to be waived in accordance with Council’s direction. This direction was one of many recommendations contained in the Hess Village Review (PED09127) presented to Committee of the Whole on May 21, 2009.

The Hess Village Review was the work of a multi-disciplinary team of City staff and Hamilton Police Services dedicated to addressing issues identified earlier in 2009 by City Council relative to Hess Village. Consultation during the review included Public Health Services, the Alcohol and Gaming Commission of Ontario, the Hess Village Pedestrian Mall Authority, Hess Village bar owners, Hess Village property owners and three residents representing the adjacent neighbourhoods.

Currently, there are nineteen (19) Agreements that apply to thirteen (13) of the seventeen (17) properties in Hess Village that have an outdoor café that encroaches on the City road allowance. Several properties have more than one Agreement registered against them, while two Agreements have not been registered on title to the property against which the Agreement applies. There are some Agreements which were approved by The Hess Village Pedestrian Mall Authority (the “Mall Authority”) under the authority found in City of Hamilton By-laws 80-179 and 80-183, passed on June 24, 1980.

Agreements with the City and the Mall Authority that required the provision of at least thirty (30) days written notice to terminate them were provided with such notice on November 27, 2009 and as such those Agreements were terminated effective December 31, 2009. An application for a new agreement was attached to the letters and the owners were advised to submit new applications for which Council has directed that the fees be waived. A number of property owners are now in the process of submitting those applications to the City for approval.

The following Agreements do not contain a provision allowing for termination on written notice of at least thirty (30) days and, instead, state that the Agreements are held at the “pleasure of Council”:

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Agreements that are at the “pleasure of Council” require the City to afford the other parties to the Agreement a duty of procedural fairness, meaning that the affected parties are notified and provided sufficient time and opportunity to argue or explain their position to Council if they do not wish Council to bring the contract to an end. The parties to these four Agreements were provided with letters on November 27, 2009 providing an explanation of the process being undertaken, setting out their right to be heard and advising them that this matter would be heard by Council by the Public Works Committee on February 1, 2010 and Council on February 10, 2010. The parties to these Agreements were also advised that on the termination of the Agreements they would be required to enter into a new agreement with the City if they wished to continue to utilize part of the City’s road allowance to operate their outdoor patio.

Furthermore, the parties to the subject agreements were reminded that, through Recommendation (c)(iii) of staff Report PED09127 on the Hess Village Review, Council authorizing the waiving of the new application fee of $1,352.19 for Outdoor Boulevard Café Encroachment Agreements, as well as waiving the cost of Land Registry Office registration fee of $70.70 per transaction. The requirement to apply for a new Outdoor Boulevard Café Encroachment Agreement also triggers the requirement to obtain a minor site plan approval to approve the patio layout. The fee for a minor site plan approval of $730.00 was waived for this process by Council on October 28, 2009.

**POLICY IMPLICATIONS**

The recommendations in this Report do not contravene or alter an established City policy.

The termination of and entering into new Outdoor Boulevard Café Agreements will fulfil the City of Hamilton Strategic Plan focus area requirement Skilled, Innovative and Respectful Organization and Effective Intergovernmental Relations. In addition, this process will fulfil the priorities established in Innovate Now! under the heading of “Communities” as it includes the requirement of establishing “mutually beneficial charters with external customers”.

**RELEVANT CONSULTATION**

Corporate Services Department, Legal Services Division has contributed to this report.

Planning and Economic Development Department, Development Planning Division created and agreed to waive the user fee for the minor site plan application for this process.
On May 27, 2009, Council approved Committee of the Whole Report 09-015, through which staff was directed to terminate the existing Agreements and enter into new Agreements with property owners.

**ANALYSIS / RATIONALE FOR RECOMMENDATION**

The Hess Village Review process identified a number of issues relevant to Hess Village as well as various groups and specific individuals who expressed interest in collectively addressing the issues. The Review’s recommendations are intended to create opportunities to improve the Hess Village environment and the effect on the surrounding residential areas. The termination of the existing Agreements and a requirement for the owners to apply for and obtain new Outdoor Boulevard Café Encroachment Agreements will provide for greater control on the patio relative to capacity and design. It also triggers the requirement for property owners to pay a one-time new application fee of $1,352.19, registration fees of $70.70 per transaction and a $730.00 fee for the minor site plan application. Council has waived these fees for the purpose of this process, such waiver being permitted as a result of these properties being located in the Downtown Hamilton Community Improvement Project Area. In 2006, Council passed a resolution imposing a city wide moratorium on the collection of annual fees for patios, which moratorium continues with respect to all new patio Agreements issued by the City.

Property owners will have had ample opportunity to ensure that a new agreement is in place in time for the 2010 patio season. Where a property owner fails to enter into a new Agreement with the City, the City may take steps to remove the encroachment, with any associated costs being assessed as taxes to the property.

**ALTERNATIVES FOR CONSIDERATION:**

The recommendations of this Report provide staff with the additional authority required to complete the recommendations endorsed by Council in May, 2009. If it is the opinion of Council that the process set out herein is no longer warranted, Council may choose not to approve the recommendations herein, however, the effect of such a decision would be to exempt these agreement holders from going through the new minor site plan application process which all other agreement holders are being required to complete.

**CORPORATE STRATEGIC PLAN**


**Skilled, Innovative & Respectful Organization**

- More innovation, greater teamwork, better client focus
**Financial Sustainability**
- Delivery of municipal services and management capital assets/liabilities in a sustainable, innovative and cost effective manner

**Intergovernmental Relationships**
- Maintain effective relationships with other public agencies

**Growing Our Economy**
- Competitive business environment
- An improved customer service

**APPENDICES / SCHEDULES**

None.