SUBJECT: Hess Village Review (PED09127) (Ward 2)

RECOMMENDATION:

(a) That with respect to the processing of liquor license applications in the City of Hamilton:

i) That Parking and By-law Services Division Staff be directed to investigate further the liquor licence application review processes of other municipalities, develop a process suitable for Hamilton, and report back to the Economic Development & Planning Committee within 3 months.

ii) That, as an interim step, until Parking and By-law Services Division staff report back to the Economic Development and Planning Committee on a liquor licence review process, that staff be directed to make the following changes to the City’s review process of liquor licence applications:

aa) That at the time the applicant submits the Municipal Information Form for signature by the City Clerk, the applicant be required to complete and submit a Supplementary Information Form outlining all necessary details of the proposal to determine zoning conformity.

bb) That the proposed fee of $150.00 for a Zoning Compliance Letter from the Building Services Division, to be submitted to the City Clerk by an applicant for a liquor licence together with their Municipal Information Form and Supplementary Information Form, be approved and included (by means of an amending by-law should the 2009 By-law have been passed by Council) in the City’s 2009 User Fees and Charges By-law.
cc) That all Municipal Information Forms submitted to the City Clerk for signature, be circulated to the following for comment:

- Ward Councillor
- Building Services Division
- Hamilton Police Services
- Public Health Department
- Parking and By-law Services Division – Municipal Law Enforcement Section
- Public Works Department – Traffic Engineering and Operations Section

iii) That where the Building Services Division is unable to determine from their records the maximum patron occupant load, the following comment be included on the Zoning Compliance Letter to be forwarded to the Alcohol and Gaming Commission of Ontario:

"The City is unable to determine whether the proposal is in conformity with the Zoning By-law and recommends that the liquor licence not be issued until such time as the applicant can satisfy the Building Services Division that the patron occupant load conforms with the requirements of the Zoning By-law. Please note that this may require the issuance of a Building Permit."

b) That with respect to Zoning By-law 05-200:

i) For the reason given in this report that there is no differentiation between restaurants and nightclubs, that staff take no further action relating to the creation of new definitions for nightclubs in the Comprehensive Zoning By-law 05-200.

ii) That staff be directed to undertake amendments to the comprehensive Zoning By-law 05-200 related to seated capacity on outdoor commercial patios as recommended in Report PED09127.

c) That with respect to the issue of Outdoor Patio Encroachment Agreements:

i) That the existing Outdoor Boulevard Café Agreements in Hess Village be terminated in accordance with the required notice as set out in each agreement (including an opportunity to be heard at Committee for those agreements that are “at the pleasure of Council”), the termination date being effective as of either the date that a new Agreement is entered into or the end of the 2009 patio season, whichever occurs first;

(ii) That applications for new Agreements be required by each property owner that wishes to encroach on the public road allowance in accordance with the Encroachment Agreement process as set out in Report PED09127.
iii) That the one time new application fee of $1,352.19 and registration fees of approximately $70.00 per transaction to deregister each of the existing Agreements and to register a new Agreement on title to their property be waived for those property owners with valid existing Agreements.

iv) That steps be taken by Operations and Maintenance Division staff to enforce the removal of patios encroaching onto the City road allowance with respect to those property owners who fail to apply for or be granted an Encroachment Agreement.

v) That the Encroachment Agreement process and precedent be amended to incorporate those concerns outlined in Report PED09127 for all new Agreements issued for patios.

vi) That a requirement of approval of an Encroachment Agreement for a patio be that the applicant prepare and submit a patio layout plan to the satisfaction of the Manager of Development Planning.

d) That with respect to the Hess Village Pedestrian Mall Authority:

i) That the Hess Village Pedestrian Mall Authority By-law be amended to transfer responsibility for issuing encroachments on the City road allowance back to the City and that Legal Services Division staff prepare said By-law for enactment by City Council.

ii) That the Hess Village Pedestrian Mall Authority be included as an external commenting body in the City’s circulation process for Encroachment Agreement applications involving the geographic boundaries associated with the Hess Village Pedestrian Mall Authority.

iii) That staff from the Downtown and Community Renewal Division be directed to review the continued existence and future role of the Hess Village Pedestrian Mall Authority (HVPMA), and the potential for a Hess Village Business Improvement Area, in consultation with HVPMA and other property/business owners in Hess Village.

e) That with respect to requests from Hamilton Police Services:

i) That Operations and Maintenance Division staff review the options available for the installation of permanent lights in the Hess Village Entertainment District for the purpose of increasing the light output at closing time of the businesses in the area as additional lighting will encourage patrons to move out of the area.

ii) That Operations and Maintenance Division staff review new methods of affixing the garbage receptacles to the street so that they cannot be rocked and pried loose.
f) That with respect to the Hess Village Entertainment District By-law and the licensing of businesses:

i) That the Hess Village Entertainment District By-law be incorporated into the Licensing Code By-law 07-170 as Schedule 21.1.

ii) That the Amending By-law to By-law No. 07-170, a By-law to License and Regulate Various Businesses, attached to Report PED09127 as Appendix ‘A’, which has been prepared in a form satisfactory to the City Solicitor, be enacted by City Council.

iii) That Parking and By-law Services Division staff be directed to report back to the Economic Development & Planning Committee on expanding the area defined as the Hess Village Entertainment District to include business properties benefiting directly from their proximity to the area, so they share in the cost of Hess Village Special Duty Police Officers.

iv) That Parking and By-law Services Division staff be directed to review restaurants and public halls and consider an amendment to Licensing Code By-law 07-170 recognizing different classes of entertainment establishments for business licensing purposes and report on same to the Economic Development and Planning Committee.

v) That the Issuer of Licences increase circulation of business licence applications that have been identified by the Alcohol and Gaming Commission of Ontario as being located in a Risk Based Licensing Area to include Hamilton Police Services, Public Works, Business Improvement Areas and any other municipal or provincial agencies as relevant for specific licences.

vi) That when requested by the Issuer of Licences, or as prescribed in the Licensing Code By-law 07-170, applicants be required to provide confirmation of compliance with applicable regulatory requirements such as:

- Ontario Electrical Safety Code
- City encroachment and/or boulevard agreements
- Proof of Liability Insurance
- Detailed Floor Plan

vii) That hours of operation of Hess Village establishments not be regulated through the Licensing Code By-law 07-170, as such regulations are not permitted.

g) That with respect to licensing of bouncers:

i) That since bouncers are regulated by Provincial legislation, bouncers not be licensed under the Licensing Code By-law 07-170.
ii) That Parking and By-law Services Division staff be directed to report to the Economic Development and Planning Committee on amending the Licensing Code By-law 07-170 to require that Schedule 17 and Schedule 21 business licence applicants who employ security guards including bouncers provide the Issuer of Licences, prior to the issuance or renewal of their licences, with confirmation that they are in good standing under the Private Security and Investigative Services Act, 2005.

h) That the Public Nuisance By-law attached as Appendix ‘B’ to Report PED09127, which has been prepared in a form satisfactory to the City Solicitor, be enacted by City Council.

i) That no further action be taken at this time relative to the enactment of an Interim Control By-law for Hess Village.

j) That Parking and By-law Services Division staff in consultation with Public Works and Hamilton Police Services be directed to report on creating taxi lanes and targeted parking restriction in the area, along with reviewing refreshment vehicle hours and locations.

k) That the principle of a Hess Village Community Liaison Committee (CLC) be endorsed and that Downtown and Community Renewal staff be directed to report back to the Economic Development and Planning Committee on:

   i) implementation strategy;
   ii) associated cost;
   iii) required manpower;
   iv) timing;
   v) area of responsibility.

l) That the Province of Ontario be requested to provide funding for the cost of additional policing for the Hess Village Entertainment District in the interests of promoting tourism and the safety and security of the area and Downtown.

m) That the Alcohol and Gaming Commission of Ontario (AGCO) be requested to notify the City of Hamilton of liquor licence transfers in order for the municipality to confirm zoning conformity prior to liquor licence transfers being approved by the Alcohol and Gaming Commission of Ontario.

n) That the document prepared by Hamilton Police Services titled “2009 Policing Strategies at Hess Village” attached as Appendix “F” to Report PED09127 be received.

Tim McCabe
General Manager
Planning and Economic Development Department
EXECUTIVE SUMMARY:

This report is the work of a multi-disciplinary team of City Staff and Staff of the Hamilton Police Services dedicated to addressing issues identified earlier this year by City Council relative to Hess Village in Downtown Hamilton. A comprehensive set of recommendations has been prepared which recommendations were formulated after months of work and consultation. We believe, if implemented, these recommendations will not only address issues identified by Council, but will ultimately result in improvements to the Hess Village experience.

The recommendations principally deal with administration by the City of such matters as handling of applications for liquor licences, road allowance encroachments through City Outdoor Patio Encroachment Agreements, encroachment agreements on the Hess Village Pedestrian Mall and assistance to the Police through the Public Works Department. Fundamental recommendations are made concerning the City’s Hess Village Entertainment District By-law and the licensing of businesses, including the recommendation that Council enact a Public Nuisance By-law to assist Police in addressing inappropriate behaviour. While Council requested that we investigate the licensing of bouncers, and we found that this is a Provincial function under The Private Security and Investigative Services Act, 2005, Parking and By-law Services Staff will be reporting on changes to the Licensing By-law to require applicants employing security personnel to demonstrate that said personnel are in good standing under the above-noted Act.

This review also resulted in recommendations relative to seated capacity on outdoor commercial patios. No change to Zoning By-law 05-200 is recommended relative to the creation of new definitions differentiating between restaurants and nightclubs.

These changes are addressing the issues identified by Council and therefore, are considered to be an effective response to Council’s concerns. Consequently, the enactment of an Interim Control By-law is not recommended.

Hamilton Police Services participated intensely with this process, attending both review committee meetings and meetings held with the Hess Village bar owners, the Hess Village property owners and the community representatives from the neighbourhoods adjacent to Hess Village. The Police report is attached to this report in fulfilment of Council’s direction that policing strategies be reported. The strategies include among others, perimeter patrols, more Special Duty Officers, Closed-Circuit Television Cameras (CCTV) and flood lighting at closing time.

Consultation concerning this review was undertaken to provide Council with input from those with an interest in Hess Village. We consulted with the Alcohol and Gaming Commission of Ontario, the Hess Village Pedestrian Mall Authority, the Hess Village bar owners, the Hess Village property owners and representatives from the adjacent neighbourhoods and, as a consequence, two (2) recommendations resulted, namely i) the creation of a Community Liaison Committee; and, ii) seeking funding from the Province of Ontario for additional policing for Hess Village in the interest of promoting tourism and the safety and security of Hess Village and the Downtown.
This effort may not be universally popular and represents significant work yet to be done by City Staff, but it is a sound and comprehensive response to the issues raised by Council at its meeting of February 11, 2009. We believe the recommendations are appropriate to redress the issues of Hess Village.

BACKGROUND:

City Council at its meeting held February 11, 2009 directed staff to report back to the Committee of the Whole in three month’s time on matters related to Hess Village including:

a) Regulation of Hours  
b) Regulation of Capacity  
c) Policing Strategies*  
d) By-law defining the review of Hess Village Entertainment District with recommendations  
e) Review of a possible interim control by-law for Hess Village  
f) Review the potential of licensing/regulating bouncers

*Note: Hamilton Police Services (HPS) participated in the Hess Village Review Team, their response is outlined in the document titled “2009 Policing Strategies at Hess Village” attached to as Appendix “F” to Report PED09127. It is recommended that the report be received. (Recommendation n)

As a consequence of Council’s direction, a multi-disciplinary staff team was established comprising representation from: Downtown & Community Renewal; Zoning By-law Reform; Parking & By-law Services; Building Services; Public Works; Hamilton Police Services; Fire Prevention Bureau; Legal Services; and, Economic Development & Real Estate. The team met during the months of February and March for the purpose of examining existing conditions, policies and procedures relative to Hess Village, as well as gathering input from: the Alcohol and Gaming Commission of Ontario (AGCO); the Hess Village Pedestrian Mall Authority; the Hess Village bar owners; the Hess Village property owners; and, the three (3) community representatives who spoke before the Committee of the Whole at its meeting held February 9, 2009. Staff from Public Health Services also attended two (2) meetings where they presented information based on research relative to public health issues, alcohol consumption and density of bars. This report coalesces the discussions into a series of issues, explanations and recommendations addressing the issues.

Existing Land Use Context and Licensed Premises

Hess Village is centred at the intersection of Hess Street South and George Street, five blocks to the west of the heart of Downtown at King and James Streets. The Hess Village Entertainment District is defined as the area bounded by King Street to the north, Caroline Street to the east, Main Street to the south, and Queen Street to the west, as illustrated on Appendix ‘C’ of Report PED09127.

There are currently 45 properties within the District, of which 17 contain establishments licensed under the Liquor Licence Act. The capacity of the licences issued by the
Alcohol and Gaming Commission of Ontario totals 4,761, including 2,479 indoor and 2,282 outdoor. The 17 establishments are located along Hess Street between Main and King Streets and along the Hess Village Pedestrian Mall between Hess and Queen Streets, as indicated on Appendices ‘D’ and ‘E’ of Report PED09127. Other uses present among the 17 establishments include offices, the Wedding Chapel, salon/spa, photo studio and residential.

The current primary uses of the 45 properties within the District are listed below:

- 17 licensed establishments (on 18 properties);
- two (2) non-licensed establishments (Tim Horton’s and Eat-a-Pita) and a convenience store on King Street West near Caroline Street;
- nine (9) office properties, including medical offices;
- five (5) other commercial properties, including two (2) vacant;
- All Saints Anglican Church at the corner of King and Queen Streets;
- five (5) residential properties, including the Aubrey Jones Seniors Apartments and the Chantilly Condominium Apartments on King Street West;
- four (4) parking lots; and,
- one (1) vacant building (i.e., the fire damaged former apartment building at the southwest corner of King and Hess Streets).

Hess Village has become known throughout the City and beyond as a destination for commercial uses, primarily dining at restaurants providing an outdoor patio setting. The businesses located there serve not only the local community but a broader market including the Downtown workforce, regional residents, tourists and convention attendees. Hess Village has also hosted special events, such as the jazz festival. In the past few years, the area has become a popular attraction for university and college students, particularly during the late hours. However, the inappropriate behaviour and public nuisance caused by some Hess Village patrons has become a concern. The issue of capacity also has been raised, as the total licensed capacity of establishments within the Hess Village Entertainment District has increased by 1,816 persons, or 62% from 2,945 in 2002 to 4,761 in 2009. It is within this context that the following matters are discussed.

**COUNCIL DIRECTION: REGULATION OF HOURS:**

**ISSUE:**
Hours of Operation: Parking and By-law Services was asked to investigate the possibility of regulating the hours of operation of Hess Village bars. In doing so, staff looked more generally at the imposition of conditions respecting the operation of these and other businesses licensed under the Liquor Licence Act.

**BACKGROUND:**
Under O. Reg. 583/06, “Licensing Powers” of the Municipal Act, 2001:
“A municipality does not have power, in a business licensing by-law, to impose any condition with respect to the sale or service of liquor, as defined in the Liquor Licence Act, as a requirement of obtaining, continuing to hold or renewing a licence issued by the municipality.”
Accordingly, the City cannot regulate the hours of operation of Hess Village bars through business licensing. The City can and does enforce compliance with the Noise By-law, the Zoning By-law, road allowance encroachment requirements and with respect to other municipal issues under the Licensing Code By-law 07-170 and the Hess Village Entertainment District By-law 06-234.

Presently, there are two ways the City can affect hours of operation of Hess Village bars:

1) A condition placed on a business licence resulting from a Licensing Tribunal hearing:
The Issuer of Licences can request a Licensing Tribunal hearing to address licensing concerns with an existing licensee and such a hearing is available to an applicant any time the Issuer of Licences refuses a business licence application. The grounds which may trigger a hearing, including where a business puts the public safety at risk or may not be carried out in accordance with the law or with honesty or integrity, are set out in the Licensing Code By-law 07-170. Both parties present their case to the Tribunal which may chose to revoke, suspend or add conditions to the existing licence or uphold the refusal of a licence application, making its recommendation for Council’s approval. A restriction of operating hours could be added as a condition to a licence, if this addresses concerns which led to the hearing, but only with the agreement of the licensee or applicant, who, when faced with a revocation, suspension or refusal, may accept such a condition as a better alternative. This has taken place on two occasions in the last three years.

2) A condition placed on a liquor licence resulting from the City’s participation in an Alcohol and Gaming Commission of Ontario hearing:
For a new liquor licence application or an existing liquor licence that is subject to hearing before the Alcohol and Gaming Commission of Ontario, the City may make submissions asking that a condition restricting hours of operation be placed on the licence. The City would have to convince the Alcohol and Gaming Commission of Ontario that the restriction is warranted for that applicant or licensee.

Liquor licence applicants are required to submit a Municipal Information Form with their Alcohol and Gaming Commission of Ontario application. This Form is signed and returned to the applicant by the City Clerk, indicating whether the applicant’s establishment is in a “wet”, “damp” or “dry” area of the City. The applicant then submits the signed form with their Alcohol and Gaming Commission of Ontario liquor licence application to the Alcohol and Gaming Commission of Ontario. The City has 30 days from the time it receives a Municipal Information Form to communicate any concerns with a liquor licence application to the Alcohol and Gaming Commission of Ontario. If there is no response from the City within 30 days, the Alcohol and Gaming Commission of Ontario assumes the municipality has no objections.

The City Clerk circulates the Municipal Information Form to the Ward Councillor and Building Services. Currently, there is no opportunity for Licensing staff to review applications at an early stage. Because there is no established and co-
ordinated review process, objections, if any, are primarily based on zoning issues raised by Building Services and not issues related to other Divisions/Departments.

The main concern is the adequacy of the current circulation and review process for new liquor licences. There is no co-ordinated City response, monitored through a central point of contact, to communicate concerns with a liquor licence application within the available 30 day period after a Municipal Information Form has been received. The opportunity for the City to have the Alcohol and Gaming Commission of Ontario impose conditions, including a condition restricting hours of operation, on liquor licences is missed because the City review process is inadequate.

Staff is investigating the liquor licence review processes currently being used in other Ontario municipalities like Windsor, London and Kitchener. Adoption of a similar process would help coordinate and streamline the City response to liquor licence applications.

These review processes involve a comprehensive municipal information package that requires liquor licence applicants to provide more detailed information to the City, and the formation of a committee of City representatives to review applications and make recommendations to Council. When there are concerns with an application, the committee may recommend that Council:

a) Object to the liquor licence application and request, at an Alcohol and Gaming Commission of Ontario hearing, that specified conditions be attached to the licence before issue;

or

b) Not object to issuance of a licence provided the applicant enters into a voluntary private agreement with the City to meet mutually agreed upon conditions, like a restriction of operating hours. The applicant is to request that these conditions be added to their liquor licence by the Alcohol and Gaming Commission of Ontario.

The review process would provide a coordinated City response to liquor licence applications, enabling more comprehensive review of applications and more timely communications with the Alcohol and Gaming Commission of Ontario to maximize the City’s ability to ensure that liquor licences include appropriate conditions such as restrictions on the hours of operation where warranted. Staff are investigating this review process and will report back to the Economic Development & Planning Committee once this investigation is complete and a version suitable for Hamilton has been developed.

It may be possible for the City to impose hours of operation restrictions through limiting use of City property by Hess Village bars. These bars are permitted the use of City property for outdoor patios. In a process managed by the Public Works Department, a Hess Village bar property owner can enter into an encroachment agreement with the City to use road allowance. Limiting the use of road allowance (not permitting service of alcohol after a certain time, or not permitting the use of road allowance in any way after
a certain hour) has been considered. The use of this option where the circumstances warrant it will be reviewed.

The Hamilton Police Service recommended staggered closings of Hess Village bars to help alleviate issues related to crowd dispersal. This may be possible if bar owners were willing to enter into a private agreement amongst themselves. As discussed above, the City can neither require early closings, nor effectively force bars to stay open to allow for staggered closing.

RECOMMENDATIONS:

a. That hours of operation of Hess Village establishments not be regulated through the Licensing Code By-law 07 -170 as such regulations are not permitted Recommendation f) vii)

b. That Parking and By-law Services Division staff be directed to investigate further the liquor licence application review processes of other municipalities, develop a process suitable for Hamilton, and report back to the Economic Development & Planning Committee within 3 months. Recommendation a) i)

COUNCIL DIRECTION: REGULATION OF CAPACITY:

ISSUE:
Does the Comprehensive Zoning By-law require amendments to address any shortcomings for interpretations to address more adequately the issue of capacity and Outdoor Commercial Patios?

BACKGROUND:
Capacity refers to the number of people permitted in an establishment, both within a building and on associated patios. Patios may be on the establishment’s own property, and/or may be permitted within the abutting road allowance through an encroachment agreement with the City and/or Hess Village Pedestrian Mall Authority. The Mall Authority deals with properties on George Street between Hess Street and Queen Street.

There are 17 establishments within the Hess Village Entertainment District that are licensed under the Liquor Licence Act. The licences are issued by the Alcohol and Gaming Commission of Ontario (AGCO). The current capacity of the licences issued by the Alcohol and Gaming Commission of Ontario totals 4,761, including 2,479 indoor and 2,282 outdoor. As previously noted, the licensed capacity of the Hess Village Entertainment District has increased by 62% from 2002 to 2009. This increase is due to a number of factors, including expansion and redevelopment of establishments, new establishments and minor variances. The occupant load increases when establishments are expanded and redeveloped, such as Sizzle, Koi, Rokbar, Elixir and the Gown and Gavel, increasing the potential indoor licensed capacity, and in turn, the potential outdoor licensed capacity due to the way the capacities are determined. In addition, approved minor variances have provided an additional 202 outdoor patio spaces in excess of what otherwise would be permitted by the Zoning By-law; the outdoor patio capacity of the Gown and Gavel was increased by 267 excess spaces by an approved Zoning By-law amendment.
Indoor capacity is established by the occupant load of the building, which is regulated by the Building Code Act and/or the Fire Protection and Prevention Act. Further, Section 12(3) of Ontario Regulation 719, as amended, and passed under the Liquor Licence Act, states that the “maximum capacity of premises to which neither the Building Code Act, 1992 nor the Fire Protection and Prevention Act, 1997 applies is determined by allowing 1.11 square metres per person.” The Zoning By-law does not determine indoor capacity; however, outdoor capacity is regulated by Section 4.20(a) of Zoning By-law 05-200.

In 2005, Council created new Downtown Zones which implement the vision and policies of “Putting People First - The New Land Use Plan for Downtown Hamilton”. As part of the new Zones, General Provisions were created, which regulated issues across the entire City, including Outdoor Commercial Patios. The Zoning By-law defines Outdoor Commercial Patios as follows:

“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.”

The Zoning By-law only regulates patios accessory to an establishment licenced under the Liquor Licence Act and does not regulate other patios not associated with the serving of alcohol.

Further, Section 4.20 of Zoning By-law 05-200, provides regulations related to Outdoor Commercial Patios, as follows:

"4.20 OUTDOOR COMMERCIAL PATIOS"

Notwithstanding any provisions of this By-law, every outdoor commercial patio shall comply with the following:

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. (By-law 06-324, October 25, 2006)

b) 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, Downtown D5 or Downtown D6 Zone or where such lot is separated
from a Residential Zone, Downtown D5 or Downtown D6 Zone by a laneway; and,

ii) Where only the rear lot line abuts a Residential Zone, Downtown D5 or Downtown D6 Zone or the lot is separated from the Residential Zone, Downtown D5 or Downtown D6 Zone by a laneway, an outdoor patio shall be permitted in the front yard.

c) 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.

As part of the Hess Village Review and research undertaken on recent developments, staff suggests there are opportunities to make revisions to Section 4.20 of Zoning By-law 05-200, to capture the intent of the policies more completely and to provide clarification, including the following:

1.0 Design

• The intent of the current regulations is to limit patio usage to the seating of customers and should explicitly indicate this.

Recommended additional regulation:

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

2.0 Seating Capacity

• The current regulations determining permitted capacity of an Outdoor Commercial Patio are related to the indoor licensed capacity, under the Liquor Licence Act.
• The licensed capacity may permit a seated capacity complying with the Zoning By-law requirement of 50% of the licensed capacity, but cannot physically be accommodated on the Outdoor Commercial Patio.
• The actual licensed capacity may not be reflective of the actual physical capacity that can be accommodated on all the Outdoor Commercial Patios.
• The current regulations permit a minimum Outdoor Commercial Patio seated capacity of 50 people even if the interior licensed capacity is minimal.
• The Building Code provides for an area per person of 1.10 square metres for dining, alcoholic beverage and cafeteria space.

Recommended regulation changes:

a) Seating Capacity Requirements

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

RECOMMENDATION:
That staff be directed to undertake amendments to the comprehensive Zoning By-law 05-200 related to seated capacity on outdoor commercial patios. Recommendation b) ii)

ISSUE:
Is the existing review process for new liquor licences adequate for the determination of compliance with the Zoning By-law.

BACKGROUND:
The Alcohol and Gaming Commission of Ontario currently requires that upon submission of an application for a new liquor licence, the applicant submit a Municipal Information Form signed by the City Clerk. The process is described in this report under “Regulation of Hours”.

As part of the Task Force review of Hess Village, staff has determined that the commenting process for new liquor licence applications is incomplete. The following questions have been identified through this review:

- Is the current submission of information from the applicant to the City adequate?
- Should the applicant be required to obtain a Zoning Verification Certificate or alternatively, be requested to complete a supplementary information form providing additional details?
- Can the Clerk delay signing the ‘Municipal Information’ Form until such time as sufficient information has been supplied?
- Does the circulation list include all relevant Divisions/Departments?
- Are fees adequate for the review of the proposal?
- Do the comments sent to the Alcohol and Gaming Commission of Ontario properly address conformity with the Zoning By-law?
- Will the Alcohol and Gaming Commission of Ontario hold applications until the City has received the necessary information to determine conformity?

As reported earlier, the current circulation list includes the Ward Councillor and the Building Services Division. However, there are other Departments that should be included in the circulation to ensure the responses received by the Alcohol and Gaming Commission of Ontario are reflective of the various departments affected by the issuance of a liquor licence. From discussion with staff, the review of the licence should also include circulation to Public Health, Fire, Licensing and Traffic to ensure the licence is properly evaluated.

The circulation of the Municipal Information Form is the City’s opportunity to determine whether the proposal conforms to the Zoning By-law. Currently, the information provided is insufficient for the Building Services Division to conduct a comprehensive review of the application. The By-law regulates the location of outdoor patios, maximum capacity, and restriction of uses conducted on the outdoor patio. Staff, in providing comments, must research the property files and determine if there is enough
information within the file to comment on the conformity with zoning regulations. Where a current or recent Building Permit application is on file, the conformity exercise is relatively straightforward. In other circumstances, for renovation of existing buildings, new restaurants occupying existing buildings, or the addition of outdoor patios, sufficient information may not be available and staff only provides comments to the Alcohol and Gaming Commission of Ontario regarding the Zoning By-law regulations.

The applicant should be required to submit the necessary details in order for the Building Services Division to conduct a thorough review and to provide comments to the Alcohol and Gaming Commission of Ontario ensuring conformity. Where the City property files do not have the relevant information available to determine conformity, it would be staff’s opinion that the applicant be required to satisfy the Building Services Division that the maximum patron occupant load conforms with the requirements of the Zoning By-law. This process would ensure a clear consistent manner in providing comments back to the applicant and the Alcohol and Gaming Commission of Ontario.

Currently there is no fee charged for the Zoning Compliance Letter that is sent to the Alcohol and Gaming Commission of Ontario from the Building Services Division. However, in order to cover the actual costs associated with the processing and issuance of this letter a fee of $150.00 is to be collected by the City Clerk on behalf of the Building Services Division upon submission of an application for a new liquor licence. The Zoning Compliance Letter would indicate if the use is permitted under the Zoning By-law, if there are any outstanding orders or building permits, and the patron occupant load permitted according to City property files. This letter would also be acceptable to the Issuer of Licences as confirmation of zoning compliance. Should the fee not be paid, Building Services Division will forward a letter to the Alcohol and Gaming Commission of Ontario not supporting the liquor licence.

With respect to the Clerk withholding his signature from the Municipal Information Form and, as a result delaying the applicant’s submission of the Form to the Alcohol and Gaming Commission of Ontario, staff noted the Municipal Information Form gives the City 30 days to comment on a liquor licence application. Any time for an extension should be addressed during that period with the Alcohol and Gaming Commission of Ontario and not by delaying an answer as to whether the applicant’s establishment is “wet”, “damp” or “dry”.

From information provided by the Alcohol and Gaming Commission of Ontario, should the City not provide any comment on the application to the Alcohol and Gaming Commission of Ontario within the 30 day comment period, the Alcohol and Gaming Commission of Ontario will assume zoning conformity by the City and proceed with the application. Should the Alcohol and Gaming Commission of Ontario receive correspondence from the City that does not provide comments in respect of zoning conformity, the Alcohol and Gaming Commission of Ontario will not proceed with the application until such time as the City provides a letter of conformity.

**RECOMMENDATIONS:**

That, as an interim step, until Parking and By-law Services Division staff report back to the Economic Development and Planning Committee on a liquor licence review
process, Council direct staff to make the following changes to the City’s review process of liquor licence applications: **Recommendation a) ii)***

a. That at the time the applicant submits the Municipal Information Form for signature by the City Clerk, the applicant be required to complete and submit a Supplementary Information Form outlining all necessary details of the proposal to determine zoning conformity; and, **Recommendation a) ii) aa)**

b. That the proposed fee of $150.00 for a Zoning Compliance Letter from the Building Services Division, to be submitted to the City Clerk by an applicant for a liquor licence together with their Municipal Information Form and Supplementary Information Form, be approved and included (by means of an amending by-law should the 2009 By-law have been passed by Council) in the City’s 2009 User Fees and Charges By-law. **Recommendation a) ii) bb)**

c. That all Municipal Information Forms submitted to the City Clerk for signature, be circulated to the following for comment: **Recommendation a) ii) cc)**
   - Ward Councillor
   - Building Services Division
   - Hamilton Police Services
   - Public Health Department
   - Parking and By-law Services Division – Municipal Law Enforcement Section
   - Public Works Department – Traffic Engineering and Operations Section

d. That where the Building Services Division is unable to determine from their records the maximum patron occupant load the following comment be included on the Zoning Compliance Letter to be forwarded to the Alcohol and Gaming Commission of Ontario: **Recommendation a) iii)**

"The City is unable to determine whether the proposal is in conformity with the Zoning By-law and recommends that the liquor licence not be issued until such time as the applicant can satisfy the Building Services Division that the patron occupant load conforms with the requirements of the Zoning By-law. Please note that this may require the issuance of a Building Permit."

**ISSUE:**
Are there sufficient differences between a restaurant and a nightclub to create separate definitions and regulations for each use in the Zoning By-law?

**BACKGROUND:**
The comprehensive Zoning By-law 05-200 implemented new definitions applicable to the Downtown Core in 2005. These definitions are intended to be applied throughout the City as additional lands are incorporated into the Zoning By-law. At this time, a definition for a Restaurant has been implemented and is specifically meant to incorporate all similar uses including a Nightclub.

Section 3: Definitions of By-law 05-200 defines a Restaurant as follows:
“Restaurant” Shall mean a building where food and/or drink is prepared and sold for immediate consumption, either on or off site, and which may offer commercial entertainment only if the premises are licensed under the Liquor Licence Act.”

In order to establish a difference between a restaurant and a nightclub, a fundamental difference in the use would need to be identified. There are three means of differentiating the uses, specifically, the hours of operation, level of service and accommodations. Should there be significant differences among the uses separate definitions may be warranted.

**Hours of Operation**

The Zoning By-law does not regulate based on hours of operation. The hours of service for licensed facilities are regulated by the Alcohol and Gaming Commission of Ontario, regardless of the use. Therefore a restaurant and a nightclub are permitted to operate at the same times during a day.

**Level of Service**

A licensed facility is required to serve food where any alcoholic beverage is served. The Zoning By-law cannot regulate the menu of food being served, the hours when food is served or the manner in which food or drinks are prepared.

Therefore, given a restaurant serves food and a nightclub is required to serve food by legislation, there is no difference in the level of service.

**Seating Arrangement**

Other municipalities have drawn a distinction between restaurant and nightclub uses by acknowledging that a nightclub has a separate dance floor, free and clear of any obstructions. In order to clearly make this distinction, the definition of a restaurant would have to establish that fixed seating is required, as the removal or re-arrangement of furniture could create a dance floor free and clear of any obstructions. However, if the definition for a restaurant required fixed seating, all restaurants including small coffee shops and take-out restaurants would require seating. Secondly, requiring that seating be fixed eliminates the flexibility a restaurant requires to re-arrange seating to accommodate various group sizes. Alternatively, a nightclub cannot be restricted from placing tables on their “dance floor” during the day to serve meals. In either a restaurant or a nightclub, there can be both fixed and non-fixed seating, areas for dancing and entertainment in the form of live or pre-recorded music.

**RECOMMENDATION:**

That, for the reason given in this report that there is no differentiation between restaurants and nightclubs, that staff take no further action relating to the creation of new definitions for nightclubs in the Comprehensive Zoning By-law 05-200. *Recommendation b) i*)
ISSUE:
Existing Encroachment Agreements that permit the location of Outdoor Boulevard Cafés on the Public Road Allowance.

BACKGROUND:
A. Existing Agreements and Termination:

Currently there are nineteen Outdoor Boulevard Café Agreements ("Agreements") that apply to thirteen of the seventeen 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. All of these Agreements are “live” and would require the City or The Hess Village Pedestrian Mall Authority to take certain steps to bring them to an end. The steps necessary in order for these Agreements to be brought to an end are:

1. Thirteen Agreements can be terminated by the City on the provision of simple written notice of at least 30 days;

2. Four additional Agreements exist “at the Pleasure of Council”, meaning that a resolution of Council is required in order to bring them to an end. In such instances, the City owes a duty of Procedural Fairness to the parties to the Agreements which requires adequate notice and an opportunity to be heard by Council prior to Council deciding the matter; and

3. Two other Agreements exist under the authority of The Hess Village Pedestrian Mall Authority (the "Mall Authority") and can be terminated by the Mall Authority on the provision of simple written notice of at least 30 days.

B. Properties without Agreements:

Four of the seventeen properties in Hess Village that have an outdoor café that encroaches on the City road allowance do not appear to have executed Agreements that provide the required permission for those property owners to encroach on the City road allowance, although at least one claim has been made that permission has been granted without complete documentation. Without a binding Agreement, the property owners using the City road allowance for a patio are doing so without legal right and without the appropriate indemnifications to the City to cover a claim in the event that an accident or injury should occur on the patio.

C. Effects of Termination of Existing Agreements:

1. The Alcohol and Gaming Commission of Ontario ("AGCO") has advised that the termination of the existing Agreements would result in either:

   a. a Notice of Proposal ("NOP") process being initiated, where the Agreements are terminated and a new capacity is not set by the Fire or Building Department, in order to remove the patio from the liquor licence; or
(b) in the issuing of an order to amend the liquor licence where the Agreements are terminated and a new capacity is set by the Fire or Building Department.

(2) The termination of these Agreements and requirement for new Agreements to be applied for and obtained would require owners who already have a binding Agreement to go through a more rigorous application process. This would provide for a greater control on the patio relative to capacity and design and would also trigger the requirement for property owners to pay a one time new application fee of $1,352.19 and registration fees of approximately $70.00 per transaction to deregister each of the existing agreements and to register a new agreement on title to their property, unless such fees were to be waived as a result of these properties being located within 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.

In order to ensure that there is no gap between the time that an existing Agreement is terminated and a new Agreement is entered into, and in order to provide for sufficient time within which to effect the amendments to the Encroachment Agreement precedent and process as set out below in this Report, the termination of these agreements should be effective as of either the date that a new Agreement is entered into or the end of the 2009 patio season, whichever occurs first. This will ensure that either a new Agreement is in place with each property owner encroaching onto the City road allowance for the 2010 patio season or, where a property owner fails to apply or be granted an Agreement that steps will be taken to enforce the removal of patios encroaching onto the City road allowance.

**RECOMMENDATIONS:**

a. That the Existing Outdoor Boulevard Café Agreements in Hess Village be terminated in accordance with the required notice as set out in each agreement (including an opportunity to be heard at Council for those agreements that are “at the pleasure of Council”), the termination date being effective as of either the date that a new Agreement is entered into or the end of the 2009 patio season, whichever occurs first. *Recommendation c) i)*

b. That applications for new Agreements be required by each property owner that wishes to encroach on the public road allowance in accordance with the Encroachment Agreement process set out below in this Report. *Recommendation c) ii)*

c. That the one time new application fee of $1,352.19 and registration fees of approximately $70.00 per transaction to deregister each of the existing Agreements and to register a new Agreement on title to their property be waived for those property owners with valid existing Agreements. *Recommendation c) iii)*

d. That steps be taken by Operations and Maintenance Division staff to enforce the removal of patios encroaching onto the City road allowance with respect to those
property owners who fail to apply for or be granted an Encroachment Agreement.

Recommendation c) iv)

ISSUE:
The Hess Village Pedestrian Mall Authority and its issuing of Outdoor Boulevard Café Agreements

BACKGROUND:
The City of Hamilton Act 1979 provided legislative authority for the municipality to establish a Pedestrian Mall. The City of Hamilton passed By-laws 80-179 and 80-183 on June 24, 1980 establishing the Hess Village Pedestrian Mall and the Hess Village Pedestrian Mall Authority (“Mall Authority”). These by-laws grant to the Mall Authority the ability to authorize the placing of certain things upon the pedestrian mall, being George Street located between Queen Street South and Hess Street South, including:

“benches, chairs, tables, displays, exhibits and any other things, for the convenience, comfort, education, refreshment, amusement or entertainment of pedestrians.”

On March 9, 1999 Council approved the Hess Village Pedestrian Mall Authority Outdoor Boulevard Café Agreement (“Hess Agreement”), which was based upon the Encroachment Agreement being used by the City at that time.

Subsequent to the granting of this authority and the approval of the Hess Agreement, the Mall Authority proceeded to issue agreements in this form. To date we have been able to locate two such agreements, which continue to be in force although they were not registered on title to the properties for which they were issued. Although not required, it appears that at some point in or around June 2001, the Mall Authority starting sending these Agreements to the City to approve issue and register on title to those properties with patios on that portion of George Street that fall under the Mall Authority. Application fees and annual fees continued to be collected by the Mall Authority from those properties under its authority although a moratorium on annual fees exists elsewhere in the City including properties located in Hess Village outside of the Mall Authority.

The two (2) found agreements that were issued by the Mall Authority would require the Mall Authority to issue a written notice to the property owners in order to bring these Hess Agreements to an end.

The Mall Authority has indicated that they would be agreeable to the City taking back the process of approving, issuing and registering such Agreements for those properties within the Mall Authority that encroach on the City road allowance, provided that they are included in the City’s circulation process for such applications located within the geographic boundaries of the Mall Authority. This would enable the City to maintain control over all Agreements issued within Hess Village using a uniform application process and Agreement. In order to effect such a change, however, an amendment to City of Hamilton By-law No. 80-183 would be required.
RECOMMENDATIONS:

a. That the Hess Village Pedestrian Mall Authority By-law be amended to transfer responsibility for issuing encroachments on the City road allowance back to the City and that Legal Services Division staff prepare said By-law for enactment by City Council. Recommendation d) i)

b. That the Hess Village Pedestrian Mall Authority be included as an external commenting body in the City’s circulation process for Encroachment Agreement applications involving the geographic boundaries associated with the Hess Village Pedestrian Mall Authority. Recommendation d) ii)

ISSUE:

Revisions to be made to the City’s Outdoor Boulevard Café Agreement and Process in order to address capacity:

BACKGROUND:

Staff can, through the Encroachment Agreement Process, impose limitations on capacity, design and seating on that portion of a patio which is located on the public road allowance. Recently, the Encroachment Agreement process and precedent have been revised to ensure that a more efficient, timely and effective process is implemented and that the Encroachment Agreement precedent reflects current risk management practices while clearly identifying the roles and responsibilities of parties to the agreement. It is appropriate that the Outdoor Boulevard Café Agreement as an encroachment on the public road allowance, be included as a part of the revised Encroachment Agreement process and be incorporated into the Encroachment Agreement precedent. In so doing, Staff would consider the incorporation of provisions that specifically address the issue of patio capacity and design, including requiring that:

(1) the patio to be used and designed for seating;

(2) capacity be based on the aggregate amount of capacity for all patios on a site to which it is accessory, including balconies, porches, decks and any other seating outside of a building;

(3) the proponent prepare a patio layout plan to the satisfaction of the Manager of Development Planning, which plan shall illustrate seating layout, capacities, conformity with the Zoning By-law and other relevant design requirements of the City, prior to acceptance of an application;

(4) periodic renewal of such agreements is provided, including confirmation from property owners that no changes have occurred to the site or building since the issuance of the agreement;

(5) certain changes would trigger the termination of an agreement and need for a new agreement, including a change in property ownership, changes to the site or building since the issuance of the original agreement, or a failure to comply with any other provision in the Agreement;
(6) an application be refused where there are outstanding issues related to Licensing, Zoning By-law or Building Code conformity on the property and,

(7) the need for adequate washroom facilities be addressed, in light of the potential nuisance impact that insufficient facilities may raise.

RECOMMENDATIONS:

a. That the Encroachment Agreement process and precedent be amended to incorporate those concerns outlined in this report for all new agreements issued for patios. *Recommendation c) v)*

b. That a requirement of approval of an Encroachment Agreement for a patio be that the applicant prepare and submit a patio layout plan to the satisfaction of the Manager of Development Planning. *Recommendation c) vi)*

ISSUE:
What is the future role of the Hess Village Pedestrian Mall Authority? Should the By-law that established the Hess Village Pedestrian Mall Authority be repealed?

BACKGROUND:
The Hess Village Pedestrian Mall (HVPM) is located on George Street between Queen Street South and Hess Street South. The Mall Authority’s Board of Directors is currently composed of two business owners and the Ward Councillor. The Business Improvement Area Co-ordinator, Downtown and Community Renewal Division, provides staff support.

With respect to the maintenance costs, the Mall Authority submits a budget to the Public Works Department each year. City Council on July 26, 1983 approved a policy that requires the Public Works Department to include maintenance funds for the Mall as part of their annual budget preparations. The amount is to be equal to 150% of the cost of regular maintenance of a typical commercial street equal in length to that of the HVPM for the maintenance of the Mall. In 1984 the Mall Authority received $4,000 towards maintenance; in 2008 they received $15,050.00.

Property owners have raised the possibility of designating a Hess Village Business Improvement Area (BIA). The potential area of the BIA, and role of its Board, would likely overlap that of the Mall Authority; therefore, the continued existence and future role of the Mall Authority should be reviewed as part of the discussion to designate a BIA. If the Mall Authority ceased to exist, the authority delegated to it would then revert back to the City. The City would provide the maintenance and would administer all encroachment agreements within Hess Village.

RECOMMENDATION:
That staff from the Downtown and Community Renewal Division be directed to review the continued existence and future role of the Hess Village Pedestrian Mall Authority (HVPMA) and the potential for a Hess Village Business Improvement Area, in consultation with HVPMA and other property/business owners in Hess Village. *Recommendation d) iii)*
COUNCIL DIRECTION: POLICING STRATEGIES:

Hamilton Police Services (HPS) has crafted a companion document titled “2009 Policing Strategies at Hess Village” attached as Appendix ‘F’ to Report PED09127 that addresses policing of Hess Village. A number of tactics identified in the HPS report affect the Public Works Department as follows:

ISSUE:
Hess Village Policing Strategy Request – Street Lighting

BACKGROUND:
Hamilton Police Services submits a policing strategy each year with respect to the Hess Village Entertainment District. For 2009, increased street lighting was identified as a way the district could be made safer. Options would be portable lights brought in and out of the area or permanent lights that would turn off and on using a timer. Superintendent William Stewart from Hamilton Police Services spoke with Public Works General Manager Gerry Davis regarding the lighting issue and Gerry Davis has agreed to provide a form of “permanent lighting” to address the policing strategy rather than a portable floodlight and advised Superintendent William Stewart that he would speak with Operations and Maintenance regarding that solution as well as funding for it from the Capital Budget.

RECOMMENDATION:
That Operations and Maintenance Division staff review the options available for the installation of permanent lights in the Hess Village Entertainment District for the purpose of increasing the light output at closing time of the businesses in the area as additional lighting will encourage patrons to move out of the area. Recommendation e) i)

ISSUE:
Hess Village Policing Strategy Request - Garbage Containers

BACKGROUND:
For 2009, Hamilton Police Services submitted a request to have the garbage receptacles affixed to the street as patrons have been seen rocking the containers until they come loose and then use the containers as weapons. At this time, garbage containers are already affixed to the street but in order to prevent them from being rocked and/or removed from their current locations, Operations and Maintenance Division staff will review the current practice to see if there is a better method. If improvements can be made, a new method would be implemented.

RECOMMENDATION:
That Operations and Maintenance Division staff review new methods of affixing the garbage receptacles to the street so that they cannot be rocked and pried loose. Recommendation e) ii)
COUNCIL DIRECTION: HESS VILLAGE ENTERTAINMENT DISTRICT BY-LAW:

ISSUE:
Parking and By-law Services Division was asked to examine the Hess Village Entertainment District By-law and its relation to the Licencing Code By-law 07-170.

BACKGROUND:
The Hess Village Entertainment District By-law was passed in 2005 (re-passed in 2006 as By-law No. 06-234) in response to public risk and nuisance concerns associated with the growth of the District. The by-law requires the operators of establishments licensed as eating establishments or public halls under the City’s Licensing Code By-law No. 07-170 to retain a minimum of eight (8) Special Duty Police Officers to patrol each Thursday, Friday and Saturday from 11:00 p.m. to 4:00 a.m. beginning April 15 and ending October 31 each calendar year. Currently, the operators of these Hess Village Entertainment District establishments contribute a pro-rated share, based on the capacity of their establishment under their liquor licence, to the cost of Special Duty Officers. Their business licence is conditional on this contribution being paid in full in a timely fashion. In addition, the Hess Village Entertainment District has recently been recognized by the Alcohol and Gaming Commission of Ontario as a Risk Based Licensing Area and is on the Risk Based Enforcement Program, meaning the area is subject to higher levels of enforcement for alcohol related offences.

The number of Special Duty Officers required under the Hess Village Entertainment District By-law was based on a seating capacity of 3120 persons and today the capacity is 4761. The seating capacity, and density of the establishments, has increased without a corresponding increase in the number of Special Duty Officers. Hamilton Police Services report ongoing issues with noise, litter, public nuisance, violence, crime and by-law violations and recommend, in their Information Report which accompanies this Report, that the number of Special Duty Officers be increased from eight (8) to ten (10) officers per shift and that the cost of the Special Duty Officers be covered completely by the Hess Village Entertainment Establishment licensees. In the past, as noted in their Information Report, the cost of the Special Duty Officers was shared between the Hamilton Police Services and the licensed establishments in the Hess Village Entertainment District.

Police and bar owners have also identified that the dispersal of patrons at the end of the night is limited by parking on Hess Street, taxicab queues and hotdog vendors setting up in the area abutting the Hess Village Entertainment District. This contributes to public safety and nuisance.

It appears that although the Hess Village Entertainment District By-law was written and passed as a stand-alone by-law, it was intended to be included in the Licensing Code By-law 07-170. The amending by-law attached as Appendix ‘A’ to Report PED09127 integrates the Hess Village Entertainment District By-law into the Licensing Code By-law 07-170. This eliminates the duplication between the two and makes it easier for both staff and the public who will only have to refer to a single by-law, the Licensing Code By-law 07-170. Although the provisions of the Hess Village Entertainment District By-law have been streamlined, the only substantive change has been to increase the number of Special Duty Officers from eight (8) to ten (10).
To further assist in addressing concerns raised about the Hess Village Entertainment District;

1) Staff recommends enacting a Public Nuisance By-law (attached as Appendix ‘B’ to Report PED09127). Hamilton Police Services support the By-law as it will be an effective tool to deal with behaviour issues related to not only the Hess Village Entertainment District but other areas across the City where similar nuisances occur. This By-law would provide Municipal Law Enforcement and Hamilton Police Services with the means of dealing with specified public nuisances. Public nuisance by-laws are used by several other municipalities including Guelph, St. Catharines and Kitchener. Staff will obtain a set fine order allowing tickets to be issued once the by-law is passed.

2) Staff has explored and will report back in a timely manner about:
   i. creating distinct classes of entertainment establishments for business licensing purposes with clear distinctions made among restaurants, bars and nightclubs that will facilitate the creation of focused licensing regulations addressing differences in operation, including increased risk of public nuisances.
   ii. the possibility of expanding the defined Hess Village Entertainment District to include businesses benefiting directly from their proximity to the area. Although these businesses enjoy economic perks associated with their location, they also share some of the problems associated with the Hess Village Entertainment District including noise, litter, vandalism, violence and crime. Special Duty Police Officers frequently deal with issues on these nearby properties, but because they are not within the defined Hess Village Entertainment District, they do not share in the cost of the Special Duty Officers. By expanding the defined Hess Village Entertainment District, these businesses will be required to contribute to the cost of the police resources they rely on to deal with problems on their property originating in the Hess Village Entertainment District.
   iii) creating parking regulations appropriate to the areas around the Hess Village Entertainment District to control taxi lanes, street parking and to review the location of refreshment vehicle (hotdog carts) hours of operation and location within the expanded district.

Such by-law amendments would require a public notice of the Committee meeting where they are to be considered prior to enactment.

3) To provide a more effective review of all licence applications, the Issuer of Licences has expanded the circulation of business licence applications and renewals to include Hamilton Police Services, Public Works, and any other agency they determine appropriate for review on licences.
4) Staff is developing a suitable internal liquor licence application review process similar to the process currently used in other Ontario municipalities to coordinate the City’s response to liquor licence applications and replace the current limited review process.

5) To ensure business licences are in compliance with requirements not enforced by the Issuer of Licences, staff suggests that the confirmation of such compliance be increased. When requested by the Issuer of Licences or when prescribed by a by-law, an applicant would be required to provide confirmation of compliance with regulatory requirements that apply to their licence such as the Ontario Electrical Safety Code, City encroachment agreement, or outdoor boulevard parking agreements.

RECOMMENDATIONS:

a. That the Hess Village Entertainment District By-law be incorporated into Licensing Code By-law 07-170 as Schedule 21.1. Recommendation f) i)

b. That the Amending By-law to By-law No. 07-170, a By-law to License and Regulate Various Businesses, attached to Report PED09127 as Appendix “A”, which has been prepared in a form satisfactory to the City Solicitor, be enacted by City Council. Recommendation f) ii)

c. That the Public Nuisance By-law attached as Appendix ‘B’ to this report, which has been prepared in a form satisfactory to the City Solicitor, be enacted by City Council. Recommendation h)

d. That Parking and By-law Services Division staff be directed to report back to the Economic Development & Planning Committee on expanding the area defined as the Hess Village Entertainment District to include business properties benefiting directly from their proximity to the area so they share in the cost of Hess Village Special Duty Police Officers. Recommendation f) iii)

e. That Parking and By-law Services Division staff be directed to review restaurants and public halls and consider an amendment to Licensing Code By-law 70-170 recognizing different classes of entertainment establishments for business licensing purposes and report on same to the Economic Development and Planning Committee. Recommendation f) iv)

f. That Parking and By-law Services Division staff in consultation with Public Works and Hamilton Police Services be directed to report on creating taxi lanes and targeted parking restrictions in the area, along with reviewing refreshment vehicle hours and locations. Recommendation j)

g. That the Issuer of Licences increase circulation of business licence applications that have been identified by the Alcohol and Gaming Commission of Ontario as being located in a Risk Based Licensing Area to include Hamilton Police Services, Public Works, Business Improvement Areas and any other municipal or provincial agencies as relevant for specific licences. Recommendation f) v)
h. That when requested by the Issuer of Licences, or as prescribed in the Licensing Code By-law 07-170, applicants be required to provide confirmation of compliance with applicable regulatory requirements such as: Recommendation f) vi)

- Ontario Electrical Safety Code
- City encroachment and/or boulevard agreements
- Proof of Liability Insurance
- Detailed Floor Plan

COUNCIL DIRECTION: INTERIM CONTROL BY-LAW:

ISSUE:
Does an Interim Control By-law need to be enacted to provide time for City staff to undertake a Planning Study for Hess Village?

BACKGROUND:
During the mid-1970’s, various zoning by-law amendments to the prevailing E-3 Zone (High Density Multiple Dwellings) were approved to permit a broader range of commercial uses, including restaurants and outdoor patios, within nearly all of the existing buildings along Hess and George Streets within the District. Hess Village’s evolution from a predominantly residential area to a mixed use area was confirmed by the Downtown Hamilton Secondary Plan, approved in 2001, and the new Zoning By-law regulations for Downtown Hamilton, approved in 2005.

The Secondary Plan, “Putting People First – The New Land Use Plan for Downtown Hamilton”, designates Downtown Specialty Commercial Areas, including Hess Village, and states that these areas are “…the key dining and entertainment areas within the Downtown.”

The Plan does provide specific policies for Hess Village, including policy 6.2.5.3.3.1a) which states:

“Hess Village will continue to accommodate a mix of at grade dining and entertainment establishments combined with residential and commercial uses.”

The Plan provides a further policy that anticipates new development and how this new development shall be designed, incorporating conservation of the heritage character and adaptive reuse of existing buildings.

The implementing zoning has provided for the range of commercial uses anticipated to be maintained and developed. The Heritage Character Zone, within the By-law, was developed in conjunction with Heritage staff to provide for the conservation of portions of Hess Village along King Street West. The Zoning By-law has provided for the regulation of Outdoor Commercial Patios accessory to restaurants to maintain the ambience created within Hess Village.

To enact an Interim Control By-law, Council must direct that a review or study be undertaken in respect of land use planning policies. The planned function envisioned
within the Plan for Downtown is implemented through the policy and zoning regulations. As such, unless Council should wish to change the planned function of Hess Village, there would not be any purpose served by enacting an Interim Control By-law to undertake a planning study for Hess Village.

RECOMMENDATION:
That, based on the foregoing, no further action be taken at this time relative to the enactment of an Interim Control By-law for Hess Village; Recommendation i)

COUNCIL DIRECTION: LICENSING/REGULATION OF BOUNCERS:

ISSUE:
Parking and By-law Services Division staff was asked to look at the possibility of licensing bouncers under the City of Hamilton Licensing Code, By-law No. 07-170.

BACKGROUND:
In reviewing the issue, staff learned that bouncers are required to be licensed under the Private Security and Investigative Services Act, 2005 (PSISA). The Act was proclaimed in force on August 23, 2007 with the licensing and registration provisions coming into effect on August 23, 2008. The Act is intended to professionalize Ontario’s security and investigative industry. It defines a security guard as a person who performs work, for remuneration, that consists primarily of guarding or patrolling for the purpose of protecting persons or property. It specifically lists “acting as a bouncer” as an example of this type of work.

PSISA and its regulations:

- Require that business entities employing in-house security guards be registered. (If a business entity employs security guards through a business licensed under the Act to sell this service, then the business entity is not required to be registered.)
  - Registrations are valid for a term of one year and cost $80.
  - Registrants are responsible for ensuring that their in-house security guards are licensed.

- Require that security guards, including in-house security guards, be licensed.
  - Licences are valid for a term of one year and cost $80.
  - Applicants for licences and licensees must be 18 years of age or older, legally entitled to work in Canada and possess a “clean criminal record” in accordance with O. Reg. 37/08. There is also a requirement that they complete prescribed training and testing. This training and testing has not yet been finalized.
  - Standards for uniforms and the use of defensive equipment and animals are prescribed in O. Regs. 362/07, 365/07 and 366/07.
  - Standards for professional conduct and demeanour are prescribed in a code of conduct under O. Reg. 363/07. A public complaints process is in place, and sanctions may apply if the code of conduct is breached.
PSISA, which is being implemented by the Ministry of Community Safety and Correctional Services, provides for a comprehensive framework regulating the security and investigative industry generally and bouncers specifically. This framework, with respect to bouncers, includes criminal records checks, training and testing, standards related to the carrying out of their duties and a public complaints process.

In addition, it is important to recognize that the Licensing Code, with few exceptions, licenses and regulates the operators of businesses and not their employees. This is to avoid having the City drawn into the employment relationship between an operator and their employees, or having it seen as providing any sort of professional certification to employees. The exception for adult entertainment businesses is made, chiefly, to ensure that there are no underage employees providing service. The exception for the limousine and taxicab businesses is made because: drivers provide service to particularly vulnerable members of the public – the elderly, the poor and often children; they are considered ambassadors for the City as they provide service to tourists and business people at airports, train stations, hotels, etc.; and they have a degree of control over their passengers, who are confined to a moving vehicle, which does not exist in other businesses.

Accordingly, it is not recommended that the City duplicate the Province’s regulatory framework by licensing bouncers under its Licensing Code. However, it is recommended that the City ensure all business entities employing bouncers, business entities which are currently licensed under Schedule 17 or Schedule 21 of the Licensing Code, comply with PSISA, in particular, by using only bouncers licensed under that Act. Failure to comply with PSISA or to provide the Issuer of Licences with confirmation of such compliance would be grounds for hearing before the Hamilton Licensing Tribunal which may result in the refusal, revocation or suspension of a licence.

RECOMMENDATIONS:

a. That since bouncers are regulated by Provincial legislation, bouncers not be licensed under the Licensing Code By-law 07-170. Recommendation g) i)

b. That Parking and By-law Services Division staff be directed to report on amending the Licensing Code By-law 70-170 to require that Schedule 17 and Schedule 21 business licence applicants who employ security guards including bouncers provide the Issuer of Licences, prior to the issuance or renewal of their licences, with confirmation that they are in good standing under the Private Security and Investigative Services Act, 2005. Recommendation g) ii)

ANALYSIS/RATIONALE:

These recommendations stem from an intensive review of issues arising from areas of inquiry identified in Council’s resolution of February 11, 2009, by City and Police staff. The review of policies and procedures identified in the preceding section of this report has revealed that there is a great deal more work to be done to address the various issues concerning the Hess Village area. More importantly, the majority of the recommendations and actions deal with operational issues that, if implemented, should redress the primary concerns raised by HPS during their presentation to the Committee of the Whole at its meeting of February 9, 2009. The HPS Strategy that accompanies
this report includes operational elements involving Parking and By-law Services; Public Works and Legal Services.

The approach to address City Council’s direction of February 11, 2009 has been to utilize a broad cross-section of the organization to address municipal responsibility of Hess Village. The recommendations are geared to improve the City’s role and the effect on the community that surrounds the Hess Village area. Recommendations are advanced to address nuisance behaviour, using licensing provisions to ensure compliance with the licensing of bouncers through Provincial regulation and securing funding for Special Duty Officers. In addition recommendations include by-law amendments to establish appropriate regulations for outdoor patios located on private property as well as on public property. Moreover, said regulations are intended to create opportunities to improve Hess Village and the effect on the surrounding residential areas.

The resultant recommendations found in this report have been developed after consultation with: Alcohol and Gaming Commission of Ontario staff, Hamilton Police Services, the Hess Village bar owners, the Hess Village property owners; the Board of Directors of the Hess Village Pedestrian Mall Authority; and, the three (3) representatives from the community that spoke before the Committee of the Whole at its meeting held February 9, 2009.

**ALTERNATIVES FOR CONSIDERATION:**

An alternative for consideration is to do nothing; however it is not recommended in light of the preceding information contained in this report demonstrating that with implementation of a number of operational and procedural initiatives, the safety and oversight of the Hess Village area will increase.

**FINANCIAL/STAFFING/LEGAL IMPLICATIONS:**

**Financial:** The majority of the recommendations contained in this report can be accommodated within existing budgets.

The initiative of flood-lighting for Hess Village will be reported on separately by Public Works if required.

In terms of the Community Liaison Committee (CLC), the responsibility is significant and there is no existing funding available for an outside facilitator and supporting stenographic work. The Downtown and Community Renewal Division will dedicate staff to co-ordinate a Community Liaison Committee and will report back separately on the implementation strategy; associated cost; required manpower; and, area of responsibility.

The waiving of the cost for terminating and deregistering existing encroachment agreements and the preparation and registration of new encroachment agreements is recommended by Public Works.
The cost of Special Duty Officers as recommended by HPS is to be paid by the bar-owners and, a recommendation of this report is that Council seek Provincial funding to assist in costs associated with the entertainment/tourist destination of Hess Village and the Downtown.

There would be an additional cost to the licence applicant of $150.00 for a Zoning Compliance Letter upon submission of an application for a new liquor licence.

**Staffing:** The implementation of the recommendations contained in this report can be accommodated by existing staff complement of the various departments involved in the Hess Village Review.

**Legal:** All recommendations where required, have been vetted through legal counsel. Recommendations that require amendments to by-laws, such as the comprehensive Zoning By-law 05-200, require a public process including public notices and public meetings.

### POLICIES AFFECTING PROPOSAL:

As previously noted in Report PED09127, Zoning By-law 05-200 contains regulations pertaining to outdoor commercial patios.

The future land use and planned function of the Hess Village area is clearly set out in the Downtown Hamilton Secondary Plan. Section 6.2.5.3.3 establishes the following vision for the area: “Hess Village will continue to be primarily a dining and entertainment area with active public spaces and a pedestrian scale. Other uses such as office, limited retail and residential will be accommodated provided the primary role of the area is maintained.” The Secondary Plan applies four land use designations to the Hess Village Entertainment District, supported by the implementing Zoning By-law 05-200.

1. **Specialty Commercial**
   Most of the Hess Village Entertainment District is subject to Specialty Commercial policies in the Downtown Hamilton Secondary Plan (Section 6.2.5.3.3), which identify Hess Village as one of two “key dining and entertainment areas in the Downtown.” (The other key area is King William Street). These policies anticipate growth in Hess Village, directing new development to respect the existing built form and character of the area, while recognizing the variety of building types located there. The continued adaptive re-use of existing buildings is strongly encouraged, to enhance and maintain the existing heritage character. Three (3) properties within the District are designated under the Ontario Heritage Act, including 34-36 Hess Street South, and 72 and 74 George Street. The Specialty Commercial Area is zoned D3, Downtown Mixed Use, which permits restaurants and commercial entertainment uses, among other uses.

2. **Mixed Use**
   The Mixed Use designation applies to future development within the Hess Village Entertainment District along Main Street between Hess Street and Caroline Street. It is intended to accommodate residential uses and commercial uses that are compatible with and will not detract from residential development. This area is also zoned D3, Downtown Mixed Use.
The area designated Mixed Use in the Hess Village Entertainment District is currently used as a commercial surface parking lot. It forms the south half of the property where proposed commercial development is to be constructed in conjunction with a commercial parking structure to be leased and operated by the Hamilton Municipal Parking System. The parking structure is intended to provide service to Hess Village.

3. **Prime Retail Streets**
The Prime Retail Streets designation applies to properties along King Street West as well as a few properties within Hess Village (i.e. 11, 13 and 14 Hess St. S., and 12 Caroline St. S.). In this area, ground floors are to be predominately occupied by street oriented commercial uses, with upper floors designated for a mix of uses including office commercial, residential and live/work space. These properties are zoned D2, Downtown Prime Retail Streets, which also permits restaurants and commercial entertainment uses, among other uses.

4. **Public Open Space**
The Secondary Plan envisions a future park at the southeast corner of Hess Street and King Street, which is currently Municipal Parking Lot No. 74 (263 King St. W.). In addition to designating the property as Public Open Space, the Secondary Plan identifies the King/Hess intersection as a Downtown Gateway which also defines the entrance to Hess Village. The property is zoned P4, Open Space.

Other policies related to Hess Village and the creation of a pedestrian-oriented dining and entertainment area featuring outdoor patios include By-laws 80-179 and 80-183, which establish the Hess Village Pedestrian Mall and grant to the Mall Authority the ability to allow encroachments on City property in the road allowance.

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**RELEVANT CONSULTATION:**

The multi-disciplinary staff team established for the Hess Village Review comprised representation from: Downtown and Community Renewal; Zoning By-law Reform; Parking and By-law Services; Building Services; Public Works; Hamilton Police Services; Fire Prevention Bureau; Legal Services; and, Economic Development & Real Estate. Representatives from Public Health Services also attended two (2) meetings of the Review Team.

On March 3, 2009 the Review Team met with Sergeant R. Serianni, Alcohol and Gaming Commission of Ontario/Ontario Provincial Police, for the purpose of discussing the liquor licence procedure at the Provincial level. Sergeant Serianni confirmed that the Alcohol and Gaming Commission of Ontario has identified Hess Village as a High Risk Enforcement Area. Sergeant Serianni also confirmed that the City of Hamilton is not notified of liquor licence transfers. As a result of these discussions a recommendation is that the City request the Alcohol and Gaming Commission of Ontario to notify the City of Hamilton prior to the transfer of liquor licences in order to confirm zoning conformity prior to any liquor licence transfers being approved. *Recommendation m)*

On March 17, 2009 the Review Team met with the Board of Directors of the Hess Village Pedestrian Mall Authority. The purpose of the meeting was to discuss Council’s direction to staff and to discuss the role of the Mall Authority. The Mall Authority agreed...
to the transfer of authority to the City of Hamilton for outdoor patio encroachments on Mall Authority lands.

On March 26, 2009 the Review Team met with the Hess Village bar owners for the purpose of discussing staff direction from Council as well as to gather input and potential solutions. The bar owners requested that Council seek Provincial funding to assist in the cost for Special Duty Policing as Hess Village is an economic stimulus and tourist attraction. The bar owners requested the funding based on the fact that the Alcohol and Gaming Commission of Ontario has identified Hess Village as a High Risk Enforcement Area and, that the Province has allocated funding to the City of Toronto towards its Entertainment District. *Recommendation l)*

On March 30, 2009 the Review Team met with the Hess Village property owners for the purpose of discussing staff direction from Council as well as to gather input and potential solutions. The property owners suggested that a Community Liaison Committee be established for the purpose of dialogue between the community and Hess Village property owners. *Recommendation k)*

On April 8, 2009 the Review Team met with the three (3) community representatives who spoke before the Committee of the Whole at its meeting held February 9, 2009 on Hess Village. The community representatives agreed with the creation of a Community Liaison Committee.

Representatives from Public Health Services attended two (2) meetings of the Hess Village Review Team presenting information on research relative to public health issues, alcohol consumption and density of bars. Public Health Services concluded that there is some evidence that higher alcohol outlet density (including both licensed facilities such as bars, and other locations where alcohol may be purchased, such as beer and liquor stores) may increase alcohol consumption and associated alcohol-related problems such as:

- underage consumption
- drinking and driving
- alcohol-related aggression
- morbidity and mortality


However, there is no defined acceptable density for a prescribed area, and overall there is not sufficient evidence to allow a policy recommendation regarding alcohol outlet density at this time.

Public Health Services will continue to review emerging evidence as further research is completed, and will provide an update in June 2010.
CITY STRATEGIC COMMITMENT:

By evaluating the “Triple Bottom Line”, (community, environment, and economic implications) we can make choices that create value across all three bottom lines, moving us closer to our vision for a sustainable community, and Provincial interests.

Community Well-Being is enhanced. ☑ Yes ☐ No
This multi-jurisdictional approach is designed to create a safer entertainment district while addressing behaviours experienced in the surrounding neighbourhoods.

Environmental Well-Being is enhanced. ☑ Yes ☐ No
The entertainment district creates a focal point that is easily accessible from various modes of transportation – foot, cycle or public transit.

Economic Well-Being is enhanced. ☑ Yes ☐ No
The initiatives will assist in retaining and attracting business, investment and tourists.

Does the option you are recommending create value across all three bottom lines? ☑ Yes ☐ No

Do the options you are recommending make Hamilton a City of choice for high performance public servants? ☑ Yes ☐ No
The approach taken to identify the initiatives recommended in this report was professionally stimulating resulting in Hamilton being a choice for employment for those interested in bettering the quality of life of its residents.

RMM:HM
Attachs. (6)
CITY OF HAMILTON

BY-LAW NO. __________

To Amend By-law No. 07-170, a By-law to License and Regulate Various Businesses

WHEREAS Council enacted a by-law to license and regulate various businesses being City of Hamilton By-law No. 07-170;

AND WHEREAS this By-law provides for a technical amendment to the General Provisions of City of Hamilton By-law No. 07-170 respecting the circulation applications for licences and for the incorporation of City of Hamilton By-law No. 06-234 to regulate Restaurants and Public Halls in the Hess Village Entertainment District into City of Hamilton By-law No. 07-170;

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

1. Section 11 of the General Provisions of By-law No. 07-170 is deleted and replaced by the following new section 11:

11.(1) The Issuer of Licences upon receipt of a proper, completed application and payment of fees for a new licence under this By-law:

(a) shall circulate the application to the departments as marked in the affirmative in Appendix "A" to this By-law; and

(b) may, in addition, circulate the application to such City or provincial departments or agencies as the Issuer of Licences deems necessary, or as directed by Council.
(2) The Issuer of Licences upon receipt of a proper, completed application and payment of fees for the renewal of a licence under this By-law:

(a) shall circulate the application to the departments as marked in the affirmative in Appendix "B" to this By-law; and

(b) may, in addition, circulate the application to such City or provincial departments or agencies as the Issuer of Licences deems necessary, or as directed by Council.

(3) Departments or agencies to which the application is provided under subsections (1) or (2), shall review obtainable information and provide the Issuer of Licences with comments or compliance reports on whether the information indicates non-compliance with an applicable law which the department or agency enforces and which applies to the proposed business, and where an inspection is made, shall provide the Issuer of Licences with a report on any non-compliance found as a result of that inspection.

(4) Where, under this By-law an applicant or licensee is to be tested, the City department responsible for the testing shall conduct the test or provide an opportunity for taking the test, and provide the Issuer of Licences with the test results.

(5) Applicants and licensees, as a condition of obtaining or continuing to hold a licence, shall permit inspections or inquiries by representatives of the departments or agencies circulated under subsections (1) and (2) as may be reasonably requested, and shall undertake the tests referred to in subsection (4).

(6) Fees which are required to be paid for the making of an inspection or the conducting of a test under subsections (4) and (5) as prescribed in Schedule 31 or the City’s User Fees and Charges By-law may be collected by the Issuer of Licences before a licence is issued or renewed.

(7) The Issuer of Licences may send notice of the comments or other response from the departments or agencies received under this section to the applicant or licensee.

2. Paragraph 12(1)(b) of the General Provisions of By-law No. 07-170 is amended by deleting “, By-law 06-234”. 
3. Section 31 of the General Provisions of By-law No. 07-170 is amended by deleting the sentence "City of Hamilton By-law No. 06-234 is not repealed."

4. The General Provisions of By-law No. 07-170 are amended by adding the following new section 32 after section 31 and renumbering the subsequent sections accordingly:

32. City of Hamilton By-law No. 06-234 is repealed.

5. By-law No. 07-170 is amended by adding the new Schedule 21.1, entitled “Hess Village Entertainment District”, attached as Appendix A to this By-law after Schedule 21, entitled “Restaurant and Food Shops”.

6. All decisions made by the Chief of Hamilton Police Services under By-law No. 06-234 shall continue to be current and valid under the new Schedule 21.1 until changed by him or her under the new Schedule.

7. All fees owed under By-law No. 06-234 shall continue to be owed under the new Schedule 21.1 and are subject to all of the applicable provisions of By-law No. 07-170 and the new Schedule.

8. This By-law comes into force on the day it is passed.

PASSED this day of , 200.

___________________________________________________  ____________________________________________________
Fred Eisenberger                                          Kevin C. Christenson
MAYOR                                                    CLERK
APPENDIX A

SCHEDULE 21.1

HESS VILLAGE ENTERTAINMENT DISTRICT

PART I: DEFINITIONS

1. In this Schedule:

   (a) "food shop" means a food shop under Schedule 21 of this By-law;

   (b) "Hess Village Entertainment District" means the geographic area in the City bordered by Caroline Street to the East, Main Street to the South, Queen Street to the West and King Street to North as shown in the map attached as Appendix A to this Schedule;

   (c) "place of amusement" means a place of amusement under Schedule 17 of this By-law;

   (d) "public hall" means a public hall under Schedule 17 of this By-law;

   (e) "restaurant" means a restaurant under Schedule 21 of this By-law; and

   (f) "Special Duty Police Officer" means a police officer who is a member of Hamilton Police Services.

PART II: SCOPE

2. This Schedule applies food shop, place of amusement, public halls and restaurant licence holders whose establishments are located in the Hess Village Entertainment District:

   (a) which has the highest concentration, in terms capacity, of bars and nightclubs, many with outdoor patios, in the City; and
(b) where, from April 15 to October 31 each year there are a large number of individuals attending such bars and nightclubs resulting in:

(i) significant noise, litter and other nuisances, such as urination in public places in and around the Hess Village Entertainment District;

(ii) line-ups to enter the bars and nightclubs that pose a safety risk to pedestrian and vehicular traffic, including inhibiting the flow of traffic along Hess Street; and

(iii) additional issues related to nuisance and safety resulting from the large number of individuals in attendance and the consumption of alcohol, in particular when such bars and nightclubs close and these individuals exit en masse.

PART III: DUTIES OF LICENCE HOLDERS

3. Food shop, place of amusement, public halls and restaurant licence holders shall retain a minimum of ten (10) Special Duty Police Officers for the Hess Village Entertainment District each Thursday, Friday and Saturday from 11:00 p.m. to 4:00 a.m. beginning April 15 and ending October 31 each calendar year.

4. Notwithstanding section 3, the Chief of Hamilton Police Services, or his or her designate, may:

(a) change the commencement date of April 15 or the ending date October 31 by giving forty-eight (48) hours prior notice to each food shop, place of amusement, public halls and restaurant licence holder;

(b) suspend the requirement to retain Special Duty Police Officers for any day or time period where he or she decides that such Special Duty Police Officers are not required for public safety, nuisance control or public protection or where such Special Duty Police Officers are not available;

(c) after consultation with the Issuer of Licences, increase or decrease the number of Special Duty Police Officers by giving thirty (30) days prior written notice to each food shop, place of amusement, public halls and restaurant licence holder.
5. Every food shop, place of amusement, public halls and restaurant licence holder shall contribute a pro rated share, based on the total capacity of their establishment under their liquor licence, to the cost of the Special Duty Police Officers required under section 3, as may be changed under section 4, and their licence shall be conditional on such contribution being paid in full in a timely fashion.

6. Every food shop, place of amusement, public halls and restaurant licence holder shall submit to the Issuer of Licences, when submitting an application to renew their licence or at such other times as the Issuer of Licences may require, a certificate from Hamilton Police Services evidencing their compliance with section 5.
CITY OF HAMILTON

BY-LAW NO. __________

A By-law to prohibit and regulate certain public nuisances within the City of Hamilton

WHEREAS sections 8, 9 and 10 of the Municipal Act, 2001, S.O. 2001, Chapter 25 (the “Municipal Act, 2001”) authorize the City of Hamilton to pass by-laws necessary or desirable for municipal purposes, and in particular paragraphs 5, 6 and 8 of subsection 10(2) authorize by-laws respecting the economic social and environmental well-being of the municipality, the health, safety and well-being of persons and the protection of persons and property;

AND WHEREAS section 128 of the Municipal Act, 2001 provides that a local municipality may prohibit and regulate with respect to public nuisances, including matters that in the opinion of Council are or could become public nuisances;

AND WHEREAS in the opinion of Council for the City of Hamilton the act of urinating or defecating in public places is or could become a public nuisance;

AND WHEREAS in the opinion of Council for the City of Hamilton, the act of knocking over mailboxes, relay boxes, newspaper boxes, recycling boxes and other waste containers located on highways is or could become a public nuisance;

AND WHEREAS Section 425 of the Municipal Act, 2001 authorizes the City of Hamilton to pass by-laws providing that a person who contravenes a by-law of the City of Hamilton passed under that Act is guilty of an offence;
NOW THEREFORE the Council of the City of Hamilton enacts as follows:

Definitions

1. In this By-law:
   (a) “City” means the geographical area of the City of Hamilton or the municipal corporation as the context requires;
   (b) “highway” includes a common and public highway, street, avenue, parkway, driveway, square, place, bridge, viaduct or trestle, any part of which is intended for or used by the general public for the passage of vehicles or person, and includes the area between the lateral property lines thereof, including sidewalks and boulevards; and
   (c) “public place” includes a highway and any place to which the public has access as of right or by invitation, express or implied, and private property that is exposed to public view, but does not include a washroom facility.

Prohibitions

2.(1) No person shall urinate or defecate in a public place.

   (2) No person shall knock over or attempt to knock over a Canada Post mailbox, Canada Post relay box, newspaper box, blue box or other waste container located on a highway. This subsection shall not apply to City employees or any person under contract to the City who is acting under the City’s Solid Waste Management By-law.

Enforcement

3. The provisions of this By-law may be enforced by a police officer or a Municipal Law Enforcement Officer appointed under any City by-law or any other person assigned or appointed by Council of the City of Hamilton to administer or enforce this By-law and includes a person employed by the City of Hamilton whose duties are to enforce this By-law.

Penalty

4. Every person who contravenes any provision of this By-law is guilty of an offence and on conviction is liable to a fine as provided for in the Provincial

**Short Title of By-law**
5. This By-law may be referred to as the “Public Nuisance By-law”.

**Comes into Force**
6. This By-law comes into force on the day it is passed.

**PASSED** this day of , 200.

______________________________   ______________________________
Fred Eisenberger                Kevin C. Christenson
Mayor                           City Clerk
Appendix ‘D’ to Report PED09127
2009 Policing Strategies at Hess Village

Report for the City of Hamilton’s Committee of the Whole

April 2009
Superintendent Bill Stewart
Hamilton Police Service
Overview

Hess Village is an economic success within the City of Hamilton; an entertainment district showcasing the business and tourism potential for downtown Hamilton. However, on week-end evenings during from May to September, thousands of people frequent the many bars and restaurants of Hess Village, impacting both Hess Village and the surrounding neighbourhoods. An analyses of calls for police and reported incidents indicate a higher than average rate of violence and anti-social behaviour in this area.

In response to these issues, an entertainment zone by-law was created that included a requirement for paid duty police officers to be hired to increase public safety and address other nuisance incidents. This By-Law gives the Chief of Police the discretion to dictate the number of Special Duty officers that the Hess Village bar owners shall employ each Thursday, Friday, and Saturday. In 2003, there were 3120 licensed seating in Hess Village and it was agreed that eight (8) special duty officers would be hired each Friday and Saturday night. The cost of the special duty officers is currently equally shared between the Hess Street bar owners and the Hamilton Police Service.

In 2007, as a result of an increased number of complaints from the neighbourhoods that border and surround Hess Village, the Hamilton Police Service recommended the Hess Street merchants hire two additional officers to patrol these perimeter neighbourhoods. An agreement could not be reached with the merchants; however, the City stepped forward and agreed to pay for these two additional officers. This initiative has been successful in reducing the number of complaints relating to disturbances, Liquor Licence Act offences, indecent acts, damage and assaults when the thousands of patrons attend or leave the Village.

Hess Village continued to grow in size and popularity, especially with the late-night younger drinking crowd. The licensed seating capacity now sits at almost 4600 patrons, and there are plans to continue expand in this area. The vast majority of stakeholders involved with Hess Village agree that updated staffing levels and strategies are required to address quality of life and safety concerns in this area of the City.
Hess Village - Police Objectives

- To achieve safety and security for the paid duty officers, by-law officers, employees and patrons and the neighbouring residents associated with Hess Village during the times when Paid Duties are employed in Hess Village

- To send a clear message to patrons and establishments that illegal activity will not be tolerated within Hess Village and the neighbourhoods, and serve to remind them of the constant vigilance by the members of the Hamilton Police Service in this regard

- To establish a communication and documentation protocol regarding Hess Village for the Hamilton Police Service

- To identify any problematic patrons and gang members who attend Hess Village

- To patrol and enforce in the surrounding neighbourhoods that border Hess Village in an effort to curb noise infractions, LLA offences, disturbances, assaults, indecent acts and mischief to property offences that tend to occur when patrons attend and leave Hess Village

- Enforce applicable Federal and Provincial Statutes and Municipal By-Laws.
Operation Plan

Each year a formal strategic Hess Village Operational Plan is developed and communicated to all officers. The plan incorporates previous year’s challenges and successes and sets out the Police response to Hess Village issues. The plans include:

- Briefing by supervisors prior to commencement of each paid duty
- Deployment of officers in such a manner to maximize visibility, ensure officer safety and to respond swiftly to disturbances
- Arrest and release procedures, including a zero tolerance approach to criminal offences
- Responsibilities of two perimeter officers and dispatcher
- Additional on-duty police staff to assist at closing time and when officers require assistance
- Tracking, reporting and follow-up regarding infractions or incidents at licensed establishments
- Communication to residents through the logs that are submitted by supervisors and perimeter officers
- Equipment issues
2009 Strategies

CCTV cameras

The CCTV cameras have been approved in the police budget and it is anticipate they will be operational by June. Signs will be erected to indicate the area is monitored by CCTV cameras. It is hoped that the cameras will serve as a crime deterrent and assist with suspect identification.

Flood lighting

In October 2008, the Hamilton Police Service sent a representative to a meeting held by the Toronto Police Service for bar owners in their entertainment zone. Toronto currently uses flood lighting at closing to assist in moving patrons away from the entertainment zones at closing.

The Hamilton Police Service has made a request through public works for flood lighting to be erected in Hess Village. The increased lighting will reduce the desire for patrons to loiter and enhance the image clarity on the CCTV cameras.

Bouncers/Doormen training

As of 2009, the Province has required that all Bouncers/Doormen at liquor licensed establishments be licensed. There is currently no requirement for training; however, the Hamilton Police Service has scheduled a date to provide training and advise to bar employees. This invitation has been extended to all bars in Hess Village.

Trespass Notice for all Hess Village premises

It is recognized that a small number of patrons cause a considerable amount of problems in Hess Village. The Police have approached and received support from Hess Street bar owners to have undesirable patrons barred from all Hess Village bars when they cause a problem at Hess Village.
Increase Number of Paid Duty Officers

The number of paid duty officers in Hess Village has not increased since 2003 when the licensed seating capacity was 3120. With the potential increase capacity at the RocBar this year, the licensed capacity in Hess Village will now exceed 5,000 patrons.

Under the Entertainment Zone By-Law, the Chief of Police has the authority to determine the number of paid duty officers in Hess Village.

It has been determined that ten (10) paid duty officers plus a communications dispatcher should be employed at Hess Village on Friday and Saturday evenings, along with the current two perimeter patrol officers. The Police Service is prepared to pay for the cost of the police dispatcher and the three perimeter patrol officers. The cost of the 10 paid duty officers will be shared by the Hess Street bar owners, based on total licensed seating capacity.

The increase in paid duty officers will also allow the overlap of paid duty officers to address pre-drinking and post closing issues.

Taxi Lanes

In order to address traffic and crowd dispersal concerns, the police have requested taxi lanes on the south lane of King Street and the north lane of Main Street, as opposed to taxis cueing up on the east lane of Queen Street.

No Stopping Zone

The Police recommend No Stopping zones on Friday and Saturday evenings on Hess Street, between King and Main Street. This will provide more space and reduce congestion for pedestrian traffic.
Targeted Enforcement

The Hamilton Police will provide additional focus on targeted those establishments that serve intoxicated persons, serve minors overcrowd their premises, or allow disorderly conduct to take place at or in relation to the premises.

Conclusion

The Hamilton Police Service is committed to working cooperatively with stakeholders, residents and agencies in problem solving, both proactively and reactively, to the issues that arise in and around Hess Village.

The Hamilton Police Service has strong concerns over the expansion that has taken place in Hess Village in the past five years, and the fact that more night clubs are expected to open or expand in the near future.

The Alcohol and Gaming Commission of Ontario (ACGO) has deemed Hess Village to be a “high risk” area based on density of night clubs in such a small geographic area.

We are encouraged by recommendations put forth by the committee to address such issues as the review and licensing of premises within Hess Village.

The Hamilton Police Service maintains that Hess Street, between King and Main; and George Street, between Queen and Hess, has reached a saturation point in terms of licensed seating capacity and are opposed to any further expansion in this area.