



TO: GENERAL COMMITTEE

SUBJECT: ZONING REGULATION OF RESTAURANTS AND NIGHTCLUBS

PREPARED BY AND KEY CONTACT: K. BRISLIN, SENIOR POLICY PLANNER
EXTENSION 4440

SUBMITTED BY: S. NAYLOR, MES, M.C.I.P., R.P.P., DIRECTOR OF PLANNING 

GENERAL MANAGER APPROVAL: R. FORWARD, MBA, M.Sc., P. ENG.
GENERAL MANAGER OF INFRASTRUCTURE, DEVELOPMENT & CULTURE 

CHIEF ADMINISTRATIVE OFFICER APPROVAL: R. FORWARD, MBA, M.Sc., P. ENG.
ACTING CHIEF ADMINISTRATIVE OFFICER 

RECOMMENDED MOTION

1. That the City of Barrie Comprehensive Zoning By-law 2009-141 and Comprehensive Zoning By-law 85-95 be amended to implement the following measures:

- a) Section 3 Definitions be amended by adding a definition for "Nightclub" after the definition for "Naturalized Buffer" as follows:

Nightclub shall mean an establishment that provides alcoholic refreshments and dancing for any period of time during its hours of operation. This shall include establishments which for a majority of their operational hours function as restaurants and convert to offer alcoholic beverages and dancing after the dinner hour, late at night and into the early hours of the morning.

- b) Section 3 Definition of an "Outdoor Patio" be amended by adding the word "nightclub" after the words "community centre" so that the definition of Outdoor Patio is as follows:

Outdoor Patio shall mean an outdoor patron area ancillary to a restaurant, conference centre, community centre, **nightclub**, private club and assembly hall.

- c) Section 4 General Provisions and General Standards Table 4.6 be amended by inserting the word **Nightclub** between **Museum** and **Nursery Garden Supply Centre** under the Uses column and inserting the words **1 space per 4 persons** following parking standards.

- d) Section 4 General Provisions be amended by adding a new section 4.13 as follows:

4.13 NIGHTCLUBS

4.13.1 General Provisions

- a) **Maximum capacity:** 600 persons, including outdoor patio areas, where capacity is the lesser of licensed capacity or occupancy load as calculated under the Building Code or Fire Code requirements.
- b) **Minimum setback** from any Residential zone including residential exception zones: 200m.

- c) Minimum distance setback from any nightclub: 200m, measured from the property boundary.
 - d) Where existing adjoining nightclubs or restaurants are connected by internal passageways used by patrons or staff, the capacity of all the connected uses must be totaled for the purposes of calculating the maximum capacity referred to in subsection 4.13.1(a) and subsection 6.2.6 of this by-law.
 - e) A new zoning schedule "Schedule 1: City Centre Revitalization Area" be added, showing the boundaries of the Allandale Community Improvement Project Area and the Downtown Next Wave Community Improvement Project Area, as denoted on Appendix "A" attached to staff report PLN005-12.
 - f) Section 6 Commercial Uses, Table 6.2, be amended by inserting a new use Nightclub between Miniature Golf (outdoor) and Nursery Garden Centre, and placing an X in the corresponding column denoting the use shall be permitted in the C1, C2 and C4 zones.
 - g) Section 6 Commercial be amended by adding 6.2.6 and 6.2.7 after 6.2.5 as follows:
 - 6.2.6 Where nightclubs and restaurants are permitted within the area identified on the attached "Schedule 1: City Centre Revitalization Area," the capacity of the restaurant or nightclub shall not exceed 350 persons which, for the purpose of this section, shall include any seasonal or permanent outdoor commercial patio area in association with the use, and may include any patio area located either on the subject premises or adjacent to the subject premises, or within the City owned right of way, and shall be based on the lesser of licensed capacity, or occupancy load as calculated under the Building or Fire Code.
 - 6.2.7 All other provisions applicable to nightclubs in section 4.13.1 shall apply to nightclubs in the City Centre Revitalization Area, except that the provisions of section 4.13.1(a) – (d) and section 6.2.6 and 6.2.7 shall not apply to any restaurant or nightclub which is in association with or in combination with a hotel/convention centre, located in the City Centre Revitalization Area.
2. That a map and inventory of existing nightclubs as defined in the proposed zoning by-law amendments be updated to establish a baseline record of legally existing nightclubs at the time of passage of the by-law outlined in staff report PLN005-12.
 3. That in accordance with Section 34(17) of the Planning Act, no further public notification is required with respect to the amendments as proposed.

PURPOSE & BACKGROUND

4. The purpose of this staff report is to report back from a public meeting which was held on November 7, 2011 to present proposed amendments to the comprehensive zoning by-law to regulate restaurants and nightclubs within the City, and to provide further recommendations with respect to zoning changes to regulate restaurants and bars.
5. Council Motion 11-G-253 dated September 2011 supported proceeding to a public meeting to consider the zoning changes as recommended in staff report PLN019-11 with some modifications, specifically to remove a recommended distance separation of restaurants from residential areas on a City wide basis. A copy of the approved Council motion is provided in Appendix "B" attached to this report.

6. Staff also received feedback at the time that the definition of nightclubs as originally proposed in staff report PLN019-11 was too complicated and confusing.
7. Staff report PLN019-11 provided an analysis supporting the recommendations that were presented at the public meeting on November 7, 2011. The executive summary to staff report PLN019-11 is attached as Appendix "C" to this report. Copies of the entire report may be obtained from Planning Services, should further background be required in this regard.

ANALYSIS

Public Meeting Comments

8. The public meeting was held on November 7, 2011 to consider the proposed changes approved by Council Motion 11-G-253. (Refer to Appendix "B" attached to this report.)
9. The effect of the proposed zoning amendment as described at the public meeting are summarized below:
 - a) Under the current provisions, "nightclubs" are considered to be "restaurants", and are subject to the same regulations and provisions as restaurants. The proposed change would create a new definition "nightclub" enabling the regulation of this use separate from "restaurants."
 - b) Under the current provisions, nightclubs are permitted in all Commercial zones including the Shopping Centre C3 zone, and the Convenience Commercial C5 zone and subject to some limitation in the EM1, EM2, EM3, EM4 Industrial zones. Refer to Appendix "D" attached which shows zones permitting nightclubs under the current zoning by-law. The proposed changes would exclude nightclubs from the C3, C5 and all Industrial zones. Nightclubs would only be permitted in the C1, C2 and C4 zones. Appendix "E" attached shows zones permitting nightclubs under the recommended zone changes.
 - c) In addition, the proposed changes would prevent new nightclubs from locating within 200m of residentially zoned areas. This would not separate nightclubs from residential uses which are permitted in combination with the commercial zones in which they are permitted. This includes residential uses permitted in the C4 General Commercial zone which is a mixed use zone applied throughout the City, and the C1 and C2 zones which are mixed use zones which are located in the downtown. It was however recommended in staff report PLN019-11 that new residential developments in the downtown be required to address noise impacts through the site plan process, and this recommendation was adopted by Motion 11-G-253. Refer to item 3a) and b) in the attached Appendix "B".
 - d) The proposed zoning changes would also require a separation distance of 200m between nightclubs where no such separation distances currently apply.
 - e) The proposed zoning changes would limit the capacity size of new "Nightclubs", where they are to be permitted, to a maximum capacity of 600 persons throughout the City, except for the City Centre Revitalization Area (see Appendix "A" attached), where the maximum capacity would be 350 persons. In addition, the size of new "Restaurants" would also be limited to a maximum of 350 persons in the Downtown Revitalization Area by the recommended changes. Currently there is no limitation on the capacity of nightclubs, or restaurants, although there is a size limitation of 300 m² applied to restaurants in the Industrial zones where restaurants permitted.

- f) Most of the existing restaurants and bars in the City Centre Revitalization Area have a capacity of 280 persons or less, including patios. They are therefore under the recommended maximums. A handful of nightclubs (5) exceed the recommended maximum capacity in the City Centre Revitalization Area. These would be legal non-conforming with respect to the recommended capacity limitations in the Downtown Revitalization Area if implemented.
 - g) The proposed changes would exempt nightclubs and restaurants in association with the development of a hotel convention centre complex in the downtown, as this is a use that is actively being sought for the downtown.
 - h) Appendix "E" attached shows where nightclubs could locate based on the zoning and separation distances recommended in this report.
10. No correspondence was received with respect to the proposed zoning changes.
11. The following comments were made at the public meeting:
- a) Judy Nuttall (86 Bruce Avenue) commented that the presentation provided at the public meeting does not address what is happening at the street level. In particular, she expressed concerns with "grandfathering" of existing establishments. She added that something more definite needs to be done in terms of zoning.
 - b) Bryan Rusnell of 6 Bayfield Street indicated that zoning should be revoked on properties that lost their license due to other legislated violations, and further that if a *legal non-conforming* operation ceases to exist for 3 months, then they should no longer be permitted. He stated limiting the grandfathering of establishments will reduce the number of nightclubs in the downtown.
12. In response to the comment that the zoning changes "*do not address what is happening at the street level*", staff report PLN019-11 noted the limitations of addressing many of the issues associated with downtown nightlife through land use control and zoning regulation. A multifaceted approach including a variety of measures such as enforcement, education and outreach, best management practices of these establishments is preferable.
13. The doctrine of legal non-conforming use, which essentially grandfathers existing uses, limits the outcomes of changes to zoning. Ultimately, the existence of legal non-conforming status is established on a case-by-case basis in the courts.
14. While legal non-conformity is governed by the Planning Act, and outside the scope of these recommendations, the comments bring to light the need to establish up to date baseline information on existing restaurants and nightclubs before the zoning by-law amendments are passed. This would facilitate implementation of the recommended zoning changes by establishing what uses would be legal non-conforming at the time of passage of the by-law. This staff report thus includes a recommendation to inventory and map existing nightclubs in the City prior to passage of the by-law.

ENVIRONMENTAL MATTERS

15. There are no environmental matters related to the recommendation.

ALTERNATIVES

16. There is one alternative available for consideration by General Committee:

Alternative #1 General Committee could maintain the existing zoning, business licensing regulations and procedures with respect to regulation of restaurants and nightclubs (i.e. status quo).

This alternative is not recommended as some adverse impacts associated with these establishments could potentially be reduced and the recommended changes are expected to facilitate enforcement and conditions imposed through the liquor licensing process.

FINANCIAL

17. If implemented, the amended by-law regulations can impact municipal staff resources in two ways. The first is dealing with enquiries from business owners and the community about the regulations.
18. The second is the workload required for municipal staff to investigate complaints regarding possible by-law contraventions. Given that this relates to after-hours activities, staff investigation may be required during non-business hours. If the ensuing investigation confirms a by-law contravention, resources are required to notify the offending property owners, encourage voluntary compliance and enforce by-law compliance if necessary. Zoning By-law enforcement staff anticipate that the impact on workload will be minimal, based on experience with recent zoning changes establishing minimum distance separation for other uses in the City.
19. However, much of zoning implementation occurs at the screening stage, when building permits are applied for, or when expansions or change of use are applied for. In this regard, an ongoing tracking system will need to be maintained in co-ordination with zoning administration and zoning enforcement staff which will have an impact on their current workload. The potential additional costs including payroll burden and corporate overhead allocation are estimated to be under \$10,000.00. This would include developing and maintaining an up to date database, review and comment and responding to community inquiries.
20. If implemented, zoning provisions are anticipated to carry greater weight and prioritization by the Alcohol and Gaming Commission of Ontario (AGCO), where the AGCO has been advised that an expansion to an establishment does not meet the zoning standards.
21. There may be an increase in Committee of Adjustment applications for expansions to legal non-conforming uses. While this may impact the workload, fees are based on cost recovery.

LINKAGE TO 2010-2014 COUNCIL STRATEGIC PLAN

22. The recommendations included in this staff report support the following goals identified in the 2010-2014 City Council Strategic Plan:
- Create a Vibrant and Healthy City Centre
 - Improve and Expand Community Involvement and City Interactions
23. The recommended changes may potentially promote a healthy mix and distribution of uses by day and night and will limit the concentrations of these uses, and as such, support the objectives

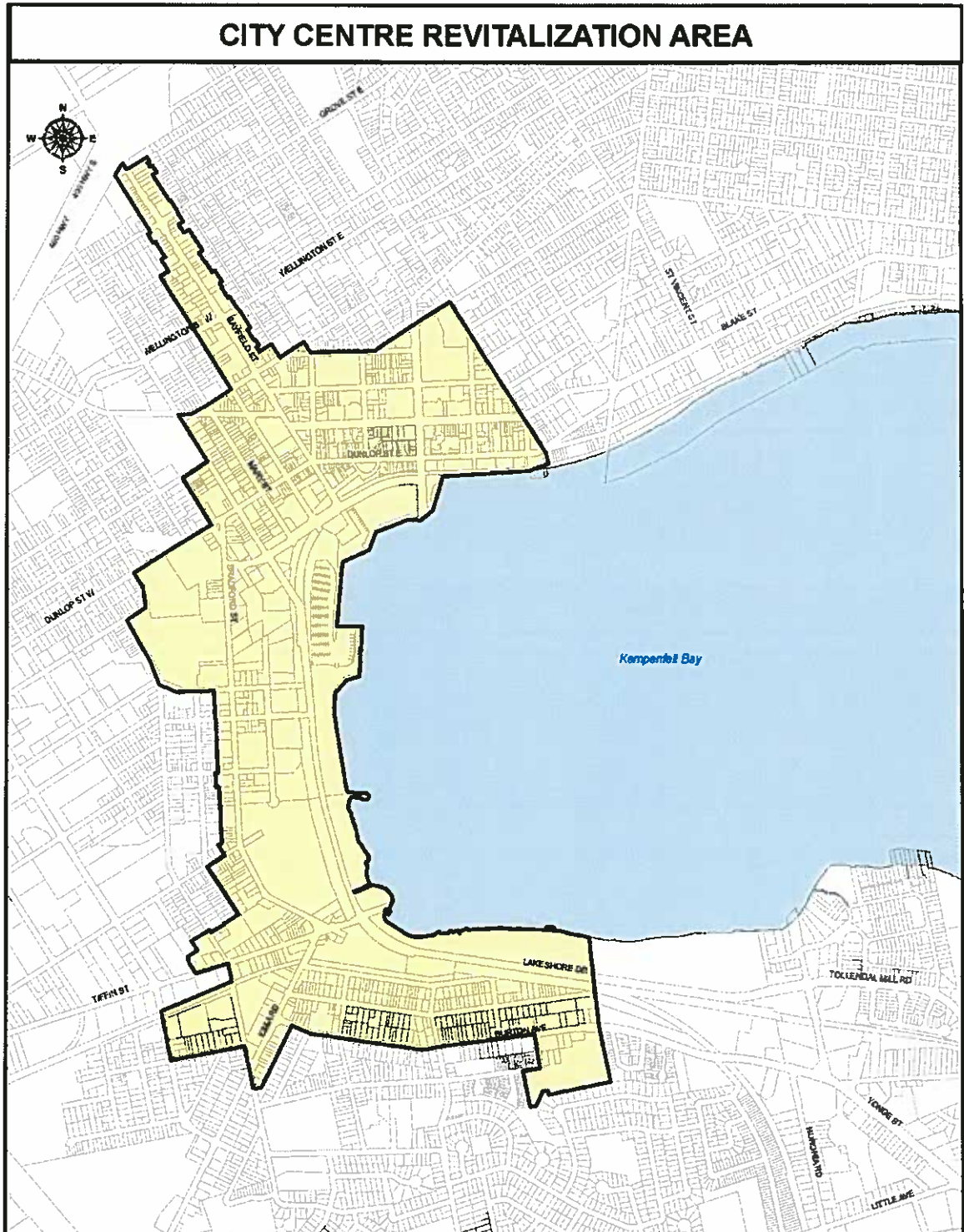
of maintaining a high quality living, working and business environment in the downtown and elsewhere in the City.

24. The recommended changes will address concerns that have been repeatedly raised by neighbourhoods and residents living in the vicinity of the downtown.

Attachments: Appendix "A" – Proposed New Zoning Schedule: Schedule 1
Appendix "B" – Motion 11-G-253 Approved by Council September 11, 2011
Appendix "C" – Executive Summary to Staff Report PLN019-11
Appendix "D" – Current Zoning: Showing areas where nightclubs are currently permitted
Appendix "E" - Recommended Zoning Changes: Showing areas where nightclubs would be permitted based on zoning changes recommended in this report.

APPENDIX "A"

Proposed New Zoning Schedule: Schedule 1



APPENDIX "B"

Motion 11-G-253 Approved by Council September 11, 2011

11-G-253 ZONING REGULATION OF RESTAURANTS, TAVERNS, BARS AND NIGHTCLUBS IN THE DOWNTOWN AND ELSEWHERE IN THE CITY

1. That a public meeting be scheduled to consider the following proposed changes to the City of Barrie Comprehensive Zoning By-law 2009-141 or the equivalent changes to Comprehensive Zoning By-law 85-95 as applicable:

a) Section 3 Definitions be amended by adding the following definition after the definition for Naturalized Buffer:

Nightclub shall mean a licensed drinking establishment, the principal business of which is to serve alcoholic beverages to the public for consumption on the premises and has an open floor area used for dancing to music, and viewing musical performances and other forms of entertainment and shall include restaurants which may convert a portion of their floor area for the purposes of a nightclub during their hours of operation, but shall not include theatres, assembly halls, adult entertainment establishments, or restaurants which exist in combination.

b) Section 3 Definition of an "Outdoor Patio" is amended by adding the word "nightclub" after the words "community centre" so that the definition of Outdoor Patio is as follows:

Outdoor Patio shall mean an outdoor patron area ancillary to a restaurant, conference centre, community centre, **nightclub**, private club and assembly hall.

c) Section 4 General Provisions and General Standards Table 4.6 is hereby amended by inserting the word **Nightclub** between **Museum** and **Nursery Garden Supply Centre** under the Uses column and inserting the words **1 space per 4 persons** following parking standards.

d) Section 4 General Provisions is hereby amended by adding a new section 4.13 as follows:

4.13 NIGHTCLUBS

4.13.1 General Provisions

Nightclubs

- i) Maximum capacity: 600 persons, including outdoor patio areas, where capacity is the lesser of licensed capacity, or occupancy load as calculated under the Building Code or Fire Code requirements.
- ii) Minimum setback from any Residential zone including residential exception zones: 200m.
- iii) Minimum distance setback from any nightclub: 200m, measured from the property boundary.

- iv) Where existing adjoining nightclubs or restaurants are connected by internal passageways used by patrons or staff, the capacity of all the connected uses must be totaled for the purposes of calculating the maximum capacity referred to in subsection 4.13.1 a) and subsection section 6.2.6 of this by-law.
- e) A New Zoning Map "City Centre Revitalization Area" be added, showing the boundaries of the Allandale Community Improvement Project Area and the Downtown Next Wave Community Improvement Project Area, as denoted on Schedule 1 attached to staff report PLN 019-11.
- f) Section 6 Commercial Uses, table 6.2 be amended by inserting a new use Nightclub between Miniature Golf (outdoor), and Nursery Garden Centre; and placing an X in the corresponding column denoting the use be permitted in the C1, C2 and C4 Zones.
- g) Section 6 Commercial be amended by adding 6.2.6 and 6.2.7 after 6.2.5 as follows:
 - 6.2.6 Where nightclubs and restaurants are permitted within the area identified on the attached Schedule 1 "City Centre Revitalization Area," the capacity of the restaurant or nightclub shall not exceed 350 persons; which, for the purpose of this section shall include any seasonal or permanent outdoor commercial patio area in association with the use, and may include any patio area located either on the subject premises or adjacent to the subject premises, or within the City owned Right of Way, and shall be based on the lesser of licensed capacity, or occupancy load as calculated under the Building or Fire Code.
 - 6.2.7 All other provisions applicable to nightclubs in section 4.13.1 shall apply.
 - 6.2.8 Except that the provisions of section 4.13.1 a) - d), and section 6.2.6 and 6.2.7, shall not apply to any Restaurant or Nightclub in association or in combination with a Hotel/Convention Centre.
- 2. That the business licensing by-law be amended to modify the definitions if required to support implementation and enforcement of zoning provisions for restaurants, bars and nightclubs.
- 3. That development applications within the "City Centre Revitalization Area" that propose residential development be required to provide the following:
 - a) A Noise Impact Assessment Study to assess noise impacts and recommend appropriate mitigating measures.
 - b) That site plan or condominium conditions require the preparation of a Community Information Map showing the existing and proposed uses in the downtown, including the neighbourhoods established in the downtown commercial masterplan, and identification of uses, highlighting entertainment uses, restaurants, nightclubs, theatres, service uses including grocery stores, pharmacies and community uses such as libraries, parks and the like.
- 4. That the Alcohol and Gaming Commission of Ontario (AGCO) be requested to deny licenses for applications to expand any existing nightclubs that exceed the maximum capacities as outlined in this report. (PLN019-11) (File: D14TE-MDS)

APPENDIX "C"

Executive Summary to Staff Report PLN019-11 Regulation of Restaurants and Bars/Nightclubs

EXECUTIVE SUMMARY

PLN019-11

Council Motion 10-G-393 directed staff, in consultation with the Barrie Downtown Business Improvement Association (BIA) and the Barrie Downtown Neighbourhood Association (BDNA) and other interested Stakeholders, to develop a definition for establishments that are primarily in the business of serving alcohol and the merits of implementing a minimum distance separation of these establishments in the downtown core as well as all parts of the City of Barrie, and report back to General Committee.

Based on a review of other zoning by-laws in Ontario, consultation with the BIA, BDNA and internal departments, staff concluded that defining restaurants as distinct from taverns or bars is problematic for a number of reasons which are explained in the report. Instead, staff considers it more appropriate to regulate nightclubs as separate from restaurants, taverns and bars. Further, there is some merit in applying a minimum distance separation to nightclubs and applying some additional regulations to nightclubs and restaurants (taverns and bars) on a city wide basis and within the City Centre Planning Area.

Accordingly, staff recommends that a public meeting be held to present the following proposed zoning changes which will allow for further stakeholder input and comment on the proposed changes:

Proposed Zoning changes for Nightclubs and Restaurants City Wide

- The current zoning definition for restaurants includes taverns, bars and nightclubs, and a new definition is proposed for nightclubs in order to apply specific regulations to these establishments as distinct from restaurants (taverns and bars).
- The proposed definition of nightclubs is based on serving alcohol and having a dance floor or providing entertainment including live or recorded music.
- Nightclubs, as defined, are proposed to be permitted in the City Centre Commercial C1 zone, the Transition Centre Commercial C2 zone and the, General Commercial C4 zone only.
- New zone provisions for nightclubs are proposed to limit the capacity to a maximum of 600 persons.
- A distance separation of 200m between nightclubs is proposed to separate these establishments from each other.
- A 200m distance separation from Residential Zones is to apply to all restaurants and nightclubs.

Proposed Zoning changes for Nightclubs and Restaurants within the City Centre Revitalization area (This area corresponds with the area covered by the Downtown and Allandale CIPs / and the Urban Growth Centre (UGC).

- Nightclubs and Restaurants are proposed to have a maximum capacity of 350 persons, including patios.
 - The 200m distance separation from other nightclubs and the 200m separation from residential zones as noted above would also apply in the City Centre Revitalization area.
 - An exemption from these recommended zone provisions is proposed for restaurants and nightclubs in association with hotel/convention centre.
-

Residential uses included in mixed use commercial zones will not be separated, however the following process changes are recommended for mixed use proposals that include residential uses in the City Centre as follows:

- A requirement for a noise impact assessment – so that noise issues can be dealt with at the design stage, through measures such as sound proofing.
- A requirement to prepare a community information map, advising prospective purchasers of the nature of the downtown, highlighting entertainment uses and nightclubs amongst other community information to be included. This is currently being required for draft plans of subdivision, a similar map for showing relevant information for the downtown is proposed for site plans and plans of condominiums that include residential uses.

Staff is also recommending that the Alcohol and Gaming Commission of Ontario (AGCO) be requested to limit the size of these establishments based on the proposed recommendations; noting however, that the AGCO places greater priority on by-law provisions in effect.

Implications

The public meeting will enable further consultation with the affected stakeholders including the BIA and BDNA and owners of restaurants (taverns and bars) and nightclubs.

Most of the restaurants (taverns and bars) in the City Centre are at capacity of 280 persons or less, including patios. They are therefore under the recommended maximums.

There are 5 nightclubs that exceed the recommended maximum capacity in the City Centre. These would be legal non-conforming with respect to capacity if the recommendations are implemented.

Under the current provisions, nightclubs are considered to be restaurants and would be permitted in all commercial zones including the Shopping Centre C3 zone, and the Convenience Commercial C5 zone and subject to some limitation in the Business Park EM1 zone, the Highway 400 Industrial EM2 zone, the Service Industrial EM3 zone and, General Industrial EM4 zone. Nightclubs under the proposed changes will not be listed as permitted uses in the C3, C5 and all of the foregoing Industrial zones under the proposed changes.

If implemented, there may be some initial financial implications in terms of staff resources. The anticipated impact is provided in an appendix to the report.

Limitations

The report notes the limitations of zoning provisions to address many of the behavioural issues raised.

The recommended changes may also potentially result in a new set of problems and present other challenges which are flagged in the report and summarized as follows:

- The entertainment and hospitality sector are considered to be an important part of downtown vision, and over-regulation may dampen revitalization efforts.
- Distribution of nightclubs (by applying a distance separation) within the City Centre has the potential to have a greater impact on the residential neighbourhoods around the City Centre compared to a concentration of these uses.
- These establishments may be driven to locate outside of the City Centre stretching enforcement and policing resources, and potentially creating a quieter less vibrant downtown.
- Implementation and enforcement will present challenges, because some legal non-conforming uses will result.

- Some restaurants may convert to nightclubs after the dinner hour by moving some chairs and tables, these would not be captured through the review of liquor license applications or building permit applications and site plan applications, and they would then potentially become an enforcement issue.
- Larger scale franchise type restaurants may be prevented from locating in the City Centre Revitalization Area, given the capacity limitation proposed.
- There may be a rush to apply for expanded capacity prior to implementation of these provisions which would be contrary to the desired outcome.
- Other non-planning / zoning measures may be more effective in addressing the behavioral issues raised including enforcement, good neighbour agreements and patron and operator awareness campaigns.

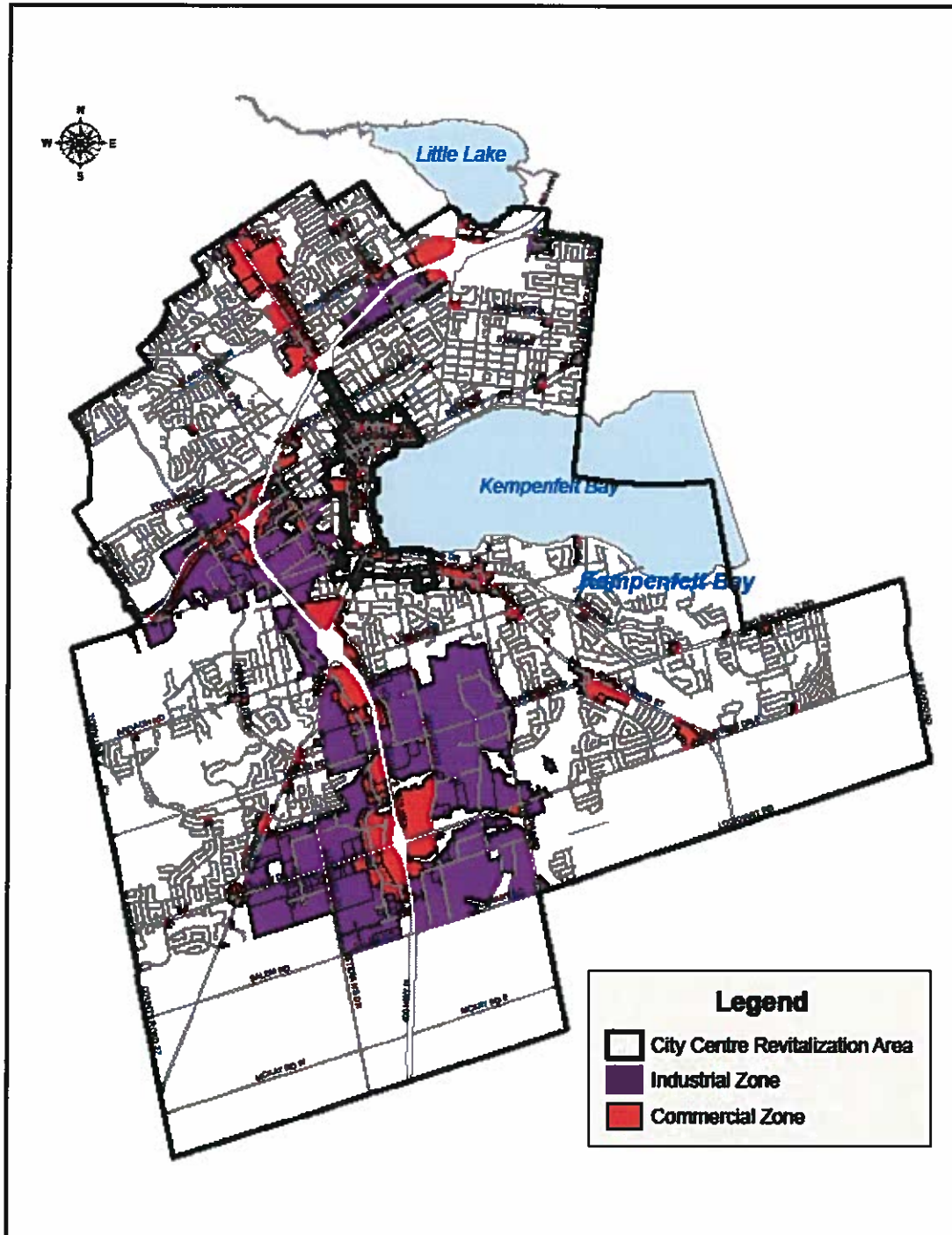
Merits of the Proposed Regulations

In balance, the recommended measures have the potential to address some of the issues raised in the long term and may have some preventative merit in the future. The potential advantages and benefits of the proposed changes if implemented are summarized below:

- Capacity limitations, once implemented in a zoning by-law, are expected to carry more weight with the AGCO in terms of issuing liquor licenses.
- The creation of some buffering between residential zones from restaurants and nightclubs will reduce spillover impacts of nighttime activities into nearby residential neighbourhoods.
- The distribution of nightclubs may limit closed frontages during regular business hours and will allow for active streets at all hours in the City Centre.
- The distribution of nightclubs may allow for easier clearance of streets after closing hours, and may potentially improve operator accountability outside of their establishments.
- The proposed changes may ultimately promote a healthy mix and distribution of uses by day and night and will limit concentration of these uses. As such, this supports the objectives of maintaining a high quality of living, working and business environment in the downtown and elsewhere in the City.
- The proposed changes may potentially address some of the concerns that have been repeatedly raised by residential neighbourhoods.
- The proposed measures to require a noise impact assessment and a community information map with residential development proposals in the Urban Growth Centre may enable some impacts on residential development to be dealt with at the design stage and may improve an understanding of the choice to live in the downtown, and the uses that are inherently part of the downtown.

APPENDIX "D"

Current Zoning -Showing Zones where Nightclubs Currently Permitted



APPENDIX "E"

Recommended Zoning Changes

Showing Areas where Nightclubs would be permitted including:
Applicable Commercial Zones, Buffer Areas and Distance Separations.

