
TO: GENERAL COMMITTEE

SUBJECT: ZONING REGULATION OF RESTAURANTS, TAVERNS, BARS AND NIGHTCLUBS IN THE DOWNTOWN AND ELSEWHERE IN THE CITY

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RECOMMENDED MOTION

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
- 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 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 this report.
- 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 and section 4.13.1 b) shall apply to all restaurants.
 - 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.

PURPOSE & BACKGROUND

5. On October 4th, 2010, City Council adopted motion 10-G-393 regarding Minimum Separation Distances for Establishments Primarily in the Business of Serving Alcohol as follows:

"That in Consultation with the Barrie Downtown BIA and the Downtown Barrie Neighbourhood Association and other interested Stakeholders, staff in the Planning Services Department 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 back to General Committee."
6. The purpose of this report is to report back on the review, analysis and consultation undertaken with stakeholders and to provide recommendations for further public consultation with regard to proposed changes to the comprehensive zoning by-law to regulate restaurants, bars, taverns and nightclubs in the City and City Centre Revitalization area (Urban Growth Centre.)
7. In addition, on February 24, 2003, Council passed motion 03-G-124 dealing with "Identification of potential amendments to the City's Zoning by-law to limit the number of Bars and Taverns in the City Centre Planning Area" as follows:

"That Planning Services staff complete a study identifying potential amendments to the City's Zoning By-law to limit the number of bars/taverns in the City Centre Planning Area."
8. Staff submitted a report PLN061-03 to General Committee in November of 2003, which per motion 03-G-613 was received with no action taken. This item has consequently remained on the Pending Items list as item P27/03. Since this report (PLN0019-11) deals with similar and related matters, staff recommends removal of Pending Item P27/03 from the Pending Items list (A copy of Staff Report PLN 061-03 will be placed in Council Chambers as supplementary background information).

EXISTING POLICY

Official Plan

9. The majority of Restaurants/Bars and Nightclubs are located within Downtown Barrie. The "City Centre" designation corresponds to a large extent with the Urban Growth Centre which is considered to be a regional hub and intensified mixed use area to be developed at densities of 150 people and jobs per hectare. The City Centre policies of the Official Plan are aimed at

enhancing and reinforcing the historic and traditional downtown role of the area, both regionally and for the local community. Multi-functional mixed uses, including commercial, institutional and more intensive residential developments are encouraged. In addition, two Revitalization and Community Improvement Plans are in place in the Downtown and Allandale Areas, and a Downtown Commercial Master Plan has been developed, all of which are intended to guide and facilitate downtown improvement and development in accordance with the vision for the City Centre.

10. The restaurant/bar/entertainment sector is expected to continue to play an important role in terms of attracting people to the City and contributing to the health of the downtown area.
11. The Official Plan was recently amended by OPA No. 7 to add wording under the City Centre Commercial land use policies in Section 4.3.2.2 to enable the establishment of minimum separation distances through the Zoning By-law to avoid a concentration of uses such as tattoo parlours, body piercing establishments, payday loan establishments and pawn shops which may detract from the City's efforts to revitalize the downtown.

Zoning By-law

12. The definition of a restaurant in the City's Comprehensive Zoning By-laws (85-95 and 2009-141) is based on preparing and serving food, which in effect includes licensed establishments such as bars, taverns and nightclubs, as long as some food is offered and prepared for sale on the premises.
13. Thus, while the comprehensive zoning by-law does not define or reference bars, nightclubs or taverns as separate permitted uses, these uses are currently considered to be restaurants based on the broad definition of a restaurant in the zoning by-law.

Location and Existing Distribution of Restaurants Taverns/Bars/Nightclubs within the City

14. Currently, restaurants (and by default taverns/bars and nightclubs) are permitted in any commercial zone, including the City Centre C1 zone and the Transition Centre C2 zone. In addition, they are permitted in all industrial zones when part of a multi-tenant building except for the restricted industrial zone EM5. Restaurants in Industrial zones are also restricted to no more than 25% of the total Gross floor area of the multi-tenant building to a maximum of 300m²(3,229ft²). Refer to the map provided in Schedule 2 attached, Industrial and Commercial Zones in which Restaurants and Bars/Taverns are permitted within the City.
15. Schedule 3A, attached to this report, shows the actual location of Restaurants and Bars/Taverns. Schedule 3B, attached to this report, shows these establishments specifically within the City Centre Revitalization Area. The greatest density of bars and taverns exists in the downtown core, constituting approximately 17 establishments, having a combined licensed capacity of over 6000 people. This represents approximately 80% of total capacity for bars or taverns within the entire City.
16. The City has no minimum distance separation provisions in the zoning by-law for licensed establishments or restaurants, and further does not apply a setback from sensitive uses that may be impacted by these uses.

ANALYSIS

Zoning Regulation in Other Ontario Municipalities

17. Prior to meeting with the BDNA and BIA, staff reviewed the Alcohol and Gaming Commission of Ontario's (AGCO) relevant definitions of licensed establishments and undertook a review of zoning by-laws of 13 municipalities generally located within central and southern Ontario.
18. The review focused on zoning definitions for a variety of licensed establishments; applicable regulations; where licensed establishments are permitted, in terms of land use categories and in relation to downtowns; whether minimum distance separation criteria were applied and any other applicable special criteria or zoning provisions, such as maximum floor area.
19. The municipal by-laws reviewed were Ajax, Burlington, Guelph, Hamilton, Kingston, Kitchener, London, Mississauga, Oakville, Orillia, Oshawa, Ottawa and Waterloo.
20. While licensed establishments are dealt with in a variety of ways in the by-laws reviewed, Ottawa was the only example that applied a minimum distance separation of 100m between bars and nightclubs, which applies to a localized 6 block area within downtown Ottawa referred to as the By Ward Market Area.
21. Ottawa, Mississauga and Burlington were the only examples that applied a separation between this type of use and sensitive uses such as residential uses. The setbacks are: 800m in Mississauga, 100m in Ottawa and 45m in Burlington.
22. What was more commonly applied in the by-laws reviewed was a maximum floor area or capacity restrictions setting the maximum number of persons. These regulations also tended to focus on the central business districts (CBDs) or downtowns of the areas reviewed.
23. In terms of restricting uses in certain commercial zones, in particular CBD's or Downtowns, nightclubs were generally identified as uses not permitted in downtowns in the by-laws reviewed. In the cases of Mississauga and Oakville, both only permitted nightclubs to locate in employment zones. While Mississauga may not be considered to have a traditional "downtown," the zoning by-law does have a CBD zone which excludes nightclubs.

Stakeholder Consultation

24. As per the Council direction, staff undertook two consultation sessions each with the Downtown Business Improvement Association (BIA)/representatives and the Barrie Downtown Neighbourhood Association (BDNA). The first meeting was to present preliminary findings and discuss issues. The topics covered at the meeting included a comparison of zoning regulations related to bars and taverns, and the planning rationale and challenges associated with the application of Minimum Distance Separation (MDS). Staff also discussed other measures applied by the comparator municipalities such as measures to regulate the size and/or capacity of these establishments; prohibition in specified zones; or separation distance from impacted uses such as Residential and Institutional uses. Staff also sought feedback from both groups regarding specific issues experienced with bars, taverns and nightclubs, in order to gain an appreciation of their issues and expectations with respect to how application of an MDS and other regulation may address these issues.
25. Comments from the BIA representatives suggested that no unusual impacts related to these uses were being experienced by other businesses downtown. The BIA felt that a healthy mix of day and night uses was considered to be beneficial and desirable. In addition, some concern was expressed at the initial meeting with the BIA with respect to problems associated with "over regulation."

26. Representatives of the BDNA identified a number of issues and concerns with bars, taverns and nightclubs ranging from safety concerns to nuisance issues. Noise and overcrowding late at night was raised as a particular concern. Similar to the BIA, the BDNA also expressed a need for diversification and establishing a healthy mix of uses in the downtown.
27. Two follow-up meetings with representatives of both groups were held on May 24th and May 25th, 2011 to explore these matters in more depth.
28. In follow-up to the meeting held with the BIA on May 24th, an informal response was submitted, stating that overall, more nightclubs are not needed in the downtown but restaurants, bars and taverns should be permitted. In addition, they noted that subject to further clarification as to the definitions proposed and a better understanding of the implications, they would discuss this further and provide a more formal response. Staff also obtained clarification from the BIA that their membership included stakeholders of restaurants and bars. The recommendation proposes further public process at which time follow-up contact with the BIA is intended.
29. The meeting with the BDNA essentially confirmed their earlier concerns and noted that "super-bars" or "mega-bars" were a particular concern and that capacity should be regulated. Some members indicated that they felt that zoning was not the appropriate means to deal with their concerns about noise, and that a number of different solutions are needed on many fronts to improve the downtown. While there was an overriding focus on noise, several members felt that better tracking of offences to identify those establishments that are frequent offenders and increased enforcement were the best solutions to noise issues.
30. Staff also met with the Barrie Police Services and By-law Enforcement Staff to understand a number of issues or problems identified by the BIA and BDNA and the challenges in enforcement. While it was recognized that there is a greater density of these establishments within the downtown and that this poses challenges at peak hours, this was considered preferable from an enforcement perspective than if these uses were distributed throughout the City or were forced to relocate into industrial areas.
31. The greatest problem identified was clearing people from the street when bars and nightclubs closed. Given the number, proximity of bars to each other and temperaments of the patrons, the potential for conflicts is exacerbated at this time.
32. In addition, staff discussed implementation of the Liquor License Application Review Process with the City Clerk. It has become clear that the AGCO prioritization for issuing licenses and imposing conditions is based on whether a by-law is offended. In this regard, zoning provisions will be an important element in implementing and enabling municipal conditions and comments related to zoning requirements.

Summary of Issues

33. In summary, the following themes emerged:
 - a. There is a need to foster and maintain a balanced mix and variety of uses in the downtown.
 - b. Part of the vision for the Downtown includes a vibrant entertainment district and night life. This needs to be recognised for what it is, and the impacts that come with that role are to be expected.
 - c. A perception that a concentration of uses that primarily operate at night creates potential for a lot of inactive frontage in the daytime, thus impacting the objective of having vibrant active streets.

- d. Streets become crowded at closing time when everyone leaves the bars and nightclubs, creating potential for conflict, rowdiness and brawls. Better distribution through separation and capacity control within the downtown may reduce potential for conflict.
- e. The late night exit with unruly behaviour impacts nearby residential uses in terms of noise.
- f. A size or capacity limitation of bars and nightclubs, coupled with a minimum distance separation, could potentially reduce overall concentrations at peak times.
- g. There was a desire to see more niche small scale restaurants and bars with patios, noting that restrictions should remain in place to prevent noise concerns from patios.
- h. Zoning measures should not result in displacement of bars to other areas, and the approach taken in Oakville and Mississauga (where Nightclubs are restricted to employment lands) was not considered appropriate in Barrie, as this would create added demands on policing and enforcement, and does not facilitate centralisation of taxi services for patrons. However, from a land use planning perspective, staff note that principles of zoning are to locate uses where they are best suited, and nightclubs may be better suited outside of the downtown, away from sensitive uses such as residential and institutional uses.
- i. The zoning by-law provisions introduced could not address noise, social problems or behavioural problems.
- j. There is a perceived preponderance of bars and nightclubs in the downtown, and there was concern with potential expansion of some of these which will add to congestion noise, anti-social behaviour and on occasion property damage.

Definitions

34. The AGCO provides for a variety of definitions for licensed establishments, however, since many of these refer to "families" or use other terminology such as "adult," they cannot be applied in a zoning document. Nonetheless, these definitions do capture the range of licensed establishments that include restaurants (dining), restaurant-bars, sports-bars, cocktail-bars, nightclubs, bars offering some other entertainment, live or recorded, including television, dancing, karaoke, electronic games or pool/billiards. In some instances there may be an overlap of one or more of these activities within the same premises with different emphasis on one or the other use at different times of the day.
35. From a zoning perspective, the purpose of defining nightclubs, bars and taverns as distinct from restaurants is to enable application of different regulations and enforcement of same, if necessary, to each use.
36. Staff reviewed the merits of regulating bars/taverns as distinct from restaurants and considered creating a separate definition for bars and taverns as follows:

Bar means a licensed drinking establishment the principal business of which is to serve any alcoholic beverages to the public for consumption on the premises.
37. Following internal circulation of a draft to various departments including Zoning Administration By-law Enforcement and Legal Services, a number of concerns were pointed out, which are summarised below:
 - The definition is too broad, and the criteria by which to establish "the principal business" was questioned (e.g.: based on revenues, floor area, hours of use).

- Restaurants and bars often co-exist on the same property or building, operating at different times, overlapping times or in combination. It is thus difficult to separate bars from restaurants.
 - Regulation of bars would limit the flexibility of these uses to cater to a range of opportunities at different hours.
 - Implementation and enforcement would be problematic, given the nature of these uses existing in combination at one location; the difficulties in determining the basis for establishing principal use, and the number of legal non-conforming situations that would arise.
 - A number of legal non-conforming uses would be created, and may be complicated to track, and may impact staffing resources.
 - Regulation of restaurants and bars are contrary to the objectives of creating vibrant active streets. A hub of patio-filled lively streets as reflected in the photographs in Appendix "B" to this report is part of the vision for the downtown.
38. Staff also considered and reviewed with zoning staff a number of definitions for bars and taverns as used in other municipalities, and attempted to come up with a unique definition that would enable applying different regulations to restaurants and bars. However, staff was unable to come up with any workable definitions that would enable regulations of restaurants as distinct and separate from bars.
39. Given that restaurants and bars are very much a part of the future vision for the downtown; that the BIA has indicated that restaurants and bars are generally considered appropriate whereas mega bars may be an issue; that the consultant for the BIA Branding has indicated there is not an issue of too many restaurants or bars in the downtown, as much as a need to attracting a variety of other uses; that a number of these uses legally exist in the downtown and any new regulations will have little effect on changing that status; and further that zoning has limited potential to address the issues raised, as noted on Appendix D attached to this report; staff ultimately concluded that there is more merit in regulating nightclubs, as distinct from restaurants as currently defined which includes bars/taverns, than regulating restaurants and bars/taverns as distinct and separate entities.
40. Staff are thus recommending a new definition to further regulate nightclubs.
41. Although many similar concerns raised above may apply to nightclubs, staff are of the opinion that regulation of nightclubs can be justified as they would potentially address some of the issues that came to light through consultation with the BIA and BDNA, specifically:
- Congestion on streets and crowd control and overspill into nearby residential neighbourhood at closing time.
 - Closed building frontages along the street during regular business hours that discourage any other uses in the area.
 - Increased accountability of individual establishments for the area along their frontage.
42. An additional concern was raised with respect to some key mixed use development projects with existing residential that may be potentially impacted by bars and nightclubs, and patios.

Minimum Distance Separation

43. A solid planning rationale for the minimum distance separation must be clearly established for it to withstand potential challenges at the Ontario Municipal Board or courts.

44. With respect to bars and nightclubs in the downtown, the mapping shows a concentration of these uses in the downtown, and by accounts of the BIA, BDNA and the Police Services staff, there are periods when patrons all exit at the same time at closing time when potential negative impacts are at their greatest. With a licensed capacity of over 6,000 people, all exiting within a concentrated area, there is potential for crowd control issues, including conflicts, brawls and or rowdiness on the streets that impacts nearby residential uses. Despite the total licensed capacity, staff recognizes that it is unlikely that these establishments would all be filled to capacity at closing time, however even at 50% of capacity this would result in a considerable number of people concentrated within a small area.
45. In addition, there are also occasional queues outside nightclubs, particularly large clubs, before opening which cause crowding on streets and may impact pedestrian traffic or conflict with other night-time uses including performing arts, theatres, cinemas and restaurants.
46. Staff are recommending a distance separation of 200m between nightclubs in the City Centre. This will distribute these establishments, providing space for queuing and will also facilitate holding the restaurant/bar or nightclub establishment accountable for management of patrons outside of their premises. It may also facilitate quicker exiting as access to rides and taxis will be enhanced as a result of better distribution.
47. This distance is based on an evaluation of longer blocks east of Bayfield Street, west of Bayfield Street, along Bradford Street and within the City Centre designation in Allandale, the range of block length in these areas is between 160m and 300m.
48. Staff are also recommending a 200m separation of restaurants/bars, and nightclubs from all residential zones throughout the City. Establishing a distance separation from nearby residential neighbourhoods will provide for some buffering between these night-time activities and the adjacent residential neighbourhoods, in particular in the downtown where they are concentrated. This distance is based on approximately 2 blocks separation, in consideration of the shortest width of blocks within the City Centre Revitalization Area being approximately 100m in width. However, residential uses permitted in the mixed use zone of the urban growth centre (UGC) cannot be shielded from these impacts through zoning provisions. The C1, C2 and C4 zones predominate in the UGC and are all considered to be mixed use zones in that they permit residential uses in combination with commercial uses. Where apartments or condominium uses are proposed in these commercial zones in the UGC, they would not be subject to the minimum distance separation.
49. Schedule 4 attached shows the areas available within the City applying the 200m distance separation from residential zones and zones permitting nightclubs and restaurants, under the proposed change. Based on the current zoning provisions and definition of a "Restaurant", a "Nightclub" would be permitted in the Shopping Centre Commercial C3 zone and the Convenience Commercial C5 zone; whereas under the recommended changes, a "Nightclub" would not be permitted in C3 and C5 zones. In addition, a "Nightclub" would not be permitted in any of the industrial zones under the recommended changes.
50. Schedule 5 attached shows the areas available within the City Centre Revitalization Area, based on the recommended zoning changes.
51. It is recognized that the objective of attracting a residential component to the City Centre to ensure activity at all hours does present some compatibility issues with some of the "night life" uses. This is particularly true of patio bars and noise impacts. Despite this, it is probable that the choice to live close to and within the City Centre comes with a specific lifestyle and expectations as to what living within the City Centre has to offer. Council recently approved a staff report IDC-009-11 to facilitate the use of the City Right of Way for outdoor patios. While this will likely see an increase in the number of patios in the downtown, the process has taken into account the impacts of patios and the applicant is required to sign off their agreement with the BIA that the patios will

- be closed by 11:00pm, in accordance with the City's Noise control By-law. Furthermore, the approval of these patios places restrictions on amplified music, allowing only acoustical performances while the patios are open.
52. Given the number of bars and nightclubs, and the total capacity and concentration of these establishments in the downtown, staff recommend that a maximum capacity of 600 persons be in place for nightclubs outside of the City Centre Revitalization Area, and that a maximum capacity of 350 persons apply to all restaurants, (which includes bars and taverns) and nightclubs in the City Centre Revitalization Area. This will address the concern for mega-bars and their impacts, and in applying the distance separation will allow for smaller niche type establishments to locate within the downtown in keeping with the overall marketing and branding concept.
 53. By way of comparison, a table showing capacity/occupant load of establishments within the City Centre is provided in Appendix "C". Based on this list, the following establishments within the City Centre have an occupant load or capacity greater than 350 persons: The Mansion, Bank, Queens Hotel, Roxx and the Ranch. These uses would become legal non-conforming in terms of maximum capacity if the recommended zoning regulations were implemented.
 54. Staff also recommends that future residential development applications within the Urban Growth Centre be required to undertake a Noise Impact Assessment and address mitigation measures such as sound proofing so that the issues surrounding living within a mixed use area, including an entertainment district, are considered through the development review process and at the design stage. This should be implemented through the development application process through a draft plan of condominium or site plan control application which should require a study to be submitted with such applications. Mitigating measures recommended in the Noise Study should be addressed through conditions of development.
 55. In addition, as with plans of subdivision where Community Information Maps are required to be prepared for purchasers as a condition of development, staff recommend that similar maps be required for residential developments within the Urban Growth Centre, and that the neighbourhoods identified in the Downtown Commercial Master Plan (DCMP) and other signature development sites be shown on the map. These maps which will show information for the DCMP and uses including entertainments uses, community uses and commercial uses such as grocery stores, banks and drug stores, are to be made available to prospective purchasers. This requirement should be implemented through the draft plan of condominium or site plan approval process as standard conditions.
 56. Zoning regulations are limited in addressing concerns and issues. There are limitations and potential pitfalls and disadvantages that will accompany these recommended measures.
 57. If the recommended changes are implemented, several downtown establishments would be impacted. While some input may have been indirectly provided by affected sector stakeholders through consultation with the BIA, if the recommendation to hold a public meeting is approved, staff propose contacting all these stakeholders in order to ensure opportunity for their input prior to reporting back to Council.
 58. The proposed changes will result in a number of legal non-conforming uses in the downtown, which means that these existing uses will not be required to comply with these proposed new provisions, but may or may not be able to expand subject to consideration by the Committee of Adjustment. Therefore the introduction of new zoning provisions could impact and/or prevent licensed establishments from expanding.
 59. The BIA previously noted that over regulation is a concern. This does not facilitate investment, in an area where one is trying to remove barriers and allow market forces to act freely.

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60. The distribution of uses by applying a minimum distance separation will increase the exposure of residential neighbourhoods to impacts from these uses. As they will be spread over a broader area, more complaints and dissatisfaction may arise as a result. The recommended 200m buffer area will not necessarily prevent noise from infiltrating into residential areas. While the BDNA noted that noise was a significant concern, they did not think that the zoning by-law was the appropriate tool to deal with this issue. It was felt that if these establishments were separated from residential neighbourhoods, there may be less potential to use these areas for parking, resulting in people spilling into the neighbourhoods after hours. The application of this buffer area is shown on Schedules 4 and 5, to this report.
61. The recommended measures may have the effect of displacing these uses to other areas, and this will place strains on available policing and enforcement resources and will potentially result in similar problems wherever these uses locate. On the other hand, distribution of these uses has the potential to reduce the behavioural issues that may arise in association with crowding after closing.
62. While implementation through comments and conditions requested with liquor licensing and enforcement may carry greater weight upon implementation of the recommended zoning changes, numerous challenges are anticipated with respect to enforcement, interpretation and implementation:
- a. The proposed definition of a nightclub is general and could be interpreted to apply to other similar uses. The zoning by-law states that where a use can be interpreted to fall under more than one definition, the more specific definition shall apply. The definition as proposed therefore clarifies that uses such as theatres are not included in the definition.
 - b. Some restaurants include bars and nightclubs and these may operate in combination with one or the other use being open at different times of the day or night. After the dinner hour, restaurants or bars may transform into night clubs by moving a few chairs and tables. The proposed zoning regulations do not capture these operational nuances, and are intended to provide for some operational flexibility for these uses. However, in cases where nightclubs are included with restaurants and/or bars in combination, they would be interpreted as two separate and distinct uses on the same premises.
 - c. Implementation occurs through zoning review at the time of the liquor licence application process, building permit or site plan application when the occupant load would be reviewed. The approval process will not capture those restaurants that convert to nightclubs after the dinner hour once they are established. In cases where a restaurant meets the required occupant load and meets the distance separation from residential zones, and later converts to a nightclub after 11 p.m. by moving a few chairs and tables; it may then be in contravention of the distance separation from other nightclubs, in which case it becomes an enforcement issue.
 - d. Given that these uses operate after regular business hours, there may be some implications in terms of enforcement based on a complaint system, putting some potential strain on zoning enforcement resources. In addition, establishing an accurate record of what exists now as legal nonconforming uses will require documentation prior to moving forward.
 - e. Establishing a limit on the capacity of establishments in the City Centre Revitalization area will have the effect of creating barriers to several of the larger franchise type restaurants from locating in the downtown. While it may not be within the vision to have larger franchise types of restaurants in the downtown, staff point out that certain types of larger restaurants offering alcohol will, as a result of the proposed recommendations, be prevented from locating in the Urban Growth Centre. This may create a lost opportunity

in terms of downtown offerings in the future and may prove contrary to the City's downtown revitalization efforts.

- f. Application of these provisions leaves a limited area available for new restaurants, and nightclubs to locate within the City Centre Revitalization Area. Refer to Schedule 5 attached to this report showing the area available for restaurants and nightclubs within the City Centre Revitalization area.
 - g. There are some key development projects pending or presently under consideration which are located within the recommended setback from residential zones, and/or the minimum distance setback from similar uses. These include the Allandale Train Station; 185-200 Dunlop Street; and 90 Collier Street. The proposed zoning regulations will only apply once they are in effect and staff is recommending an exemption for restaurants and nightclubs in association with a hotel/convention centre, which are being encouraged to locate in the downtown. In addition, if these uses are proposing a residential component, depending on the timing of the applications, they would be impacted by the process changes recommended for site plan control or condominium developments; requiring the preparation of Noise Impact Assessments and a Community Information Map.
63. The table provided in Appendix "E" compares a variety of measures which may be taken, and staff's cursory opinion as to the extent to which they address the issues raised; noting that the recommended zoning changes may in staff's opinion have very little short-term positive impact but may have a possible long-term positive impact on the following issues:
- a. Overcrowding, congestion and associated problems at closing time.
 - b. Negative impacts on nearby residential zones.
 - c. Closed storefronts during regular business hours, discouraging a mix of uses.
64. The above items and attached Table in Appendix "E" applies to the Downtown Revitalization Area, however, there are implications outside of this area which are identified as follows:
- a. The recommended changes may result in displacement of nightclubs and restaurants of over 350 person capacity to other areas where they would be permitted within the City. The affected areas are shown on Schedule 4 attached to this report. This may distribute these uses and reduce the impacts related to conglomeration, but will also potentially transport some unintended impacts that cannot be addressed through zoning to these areas. Staff notes there were concerns raised with distribution of these uses similar to the approach taken in Mississauga, which was not considered a desirable approach from an enforcement and policing perspective.
 - b. Staff also wish to point out that the above recommendations may trigger a number of applications for greater capacity in advance of the regulations taking effect. Therefore, staff are recommending that the AGCO be requested to decline applications that exceed the capacity recommended, prior to implementation. Staff note, however, that the AGCO will place greater weight on a by-law in effect than a Council motion.

ENVIRONMENTAL MATTERS

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

ALTERNATIVES

66. Three alternatives are presented for consideration by General Committee:

Alternative #1 That no public meeting be scheduled and General Committee could maintain the existing zoning, business licensing regulations and procedures with respect to regulation of restaurants, bars, taverns and nightclubs (i.e. Status Quo).

This alternative is not recommended as staff are of the opinion that some issues identified within the downtown could potentially be prevented from worsening, and may, in the long term be positively impacted by the proposed changes.

Alternative #2 That a public meeting be scheduled to consider zoning changes to prohibit nightclubs from locating within the Downtown Revitalization area, and provide for a distance separation of nightclubs from Residential zones. This may, in the long term address many of the issues raised in relation to the Downtown, and is a simpler solution in terms of implementation, as it would not require application of a distance separation between these uses, or capping of capacity. Staff does not however recommend this approach, as all existing nightclubs in the downtown would enjoy legal non-conforming status without specified limited on their size. This would, in staff's opinion be less effective than the recommended changes in terms of requesting the AGCO to apply special conditions, and as a result would have little to no short term benefit.

Further, as noted previously, there are concerns with policing, safety and enforcement when these uses are more distributed and dispersed, throughout the city. This alternative would require the same policing within the downtown, in addition to policing of areas outside of the downtown. In addition, since there would be less night time activity in the areas outside of the downtown the benefits of "eyes on the street" would not apply. In staff's opinion, despite the challenges and issues that triggered this report, nightclubs, restaurants and bars remain an important component of the downtown revitalization, and offering a safe, entertaining lively nightlife downtown is a feature which could be embraced as a positive identifying feature and attraction, unique to the City of Barrie.

Alternative #3 That other non-planning measures to address the issues be investigated, including increased enforcement, Good Neighbour Agreements with establishments serving alcohol, and Patron, Business Operator Awareness Program.

This alternative does not address the Council motion.

FINANCIAL

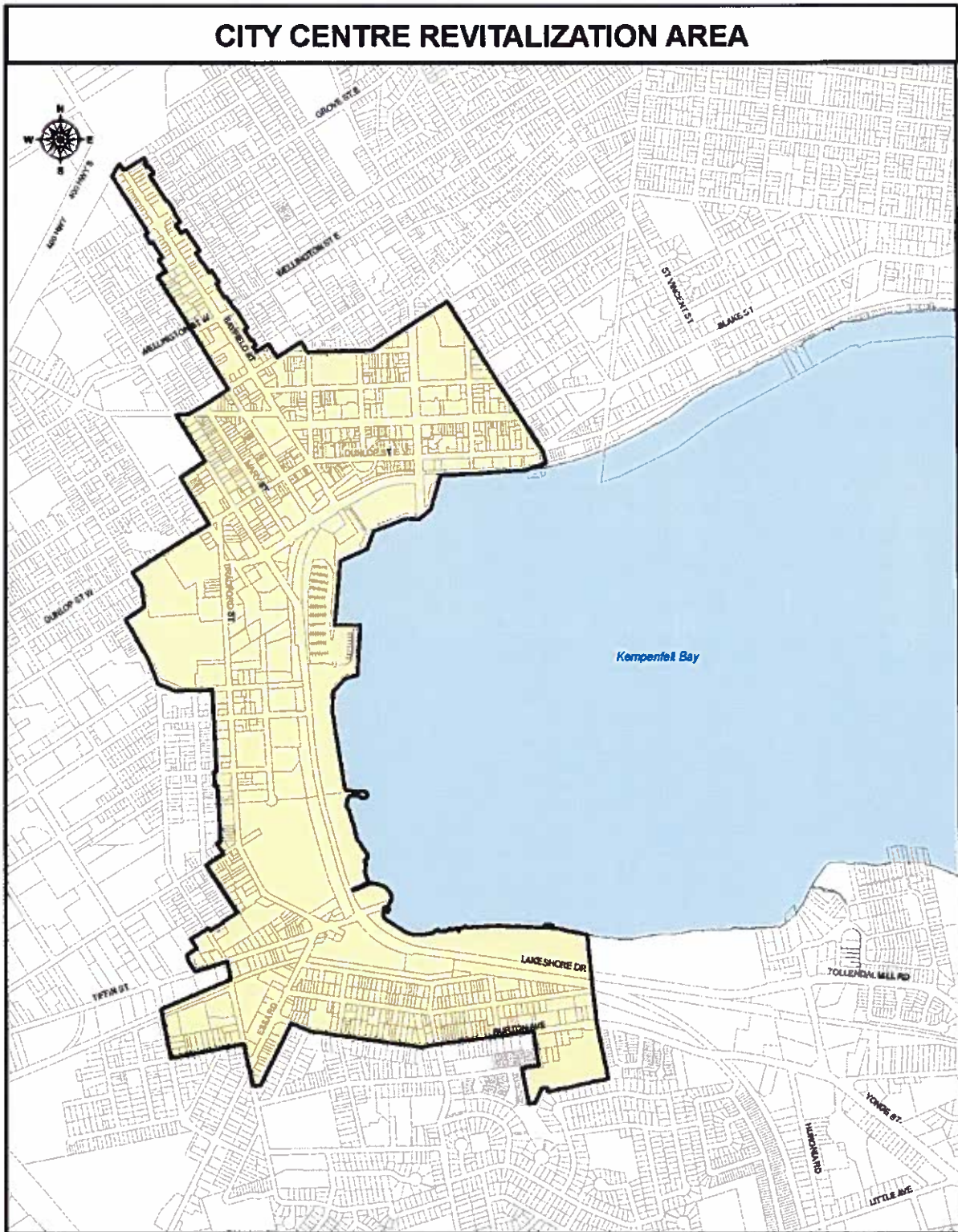
67. There are no financial implications with respect to proceeding to public consultation, however, if implemented following public consultation, staff note that by-law regulations can impact municipal staff resources in two ways.
68. The first is dealing with enquiries from business owners and the community about the regulations. Such enquiries are often followed with discussions about the merits of the by-law's restrictions and what can be done to either get around the regulations or seek an exception.

69. The second is the work load 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 after-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.
70. Much of the zoning implementation, however, occurs at the screening stage, when building permits are applied for or when expansions or change of use are applied for. In this regard, the proposed changes to the Zoning By-law are not likely to have a significant impact on the workload of the Zoning administration and enforcement staff.
71. If implemented, zoning provisions may carry greater weight and prioritization by the AGCO, where Council requests the AGCO to deny expansions to those establishments that do not meet the zoning standards.
72. These impacts of enforcement will be assessed in greater detail at the time staff reports back to General Committee, following further public consultation recommended in this report.
73. 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.
74. An initial estimation of the additional staff resources needed if the recommendations of this report come into effect are provided in Appendix D, attached to this report. This will be refined upon with further input from affected departments following the public consultation process if approved by Council.

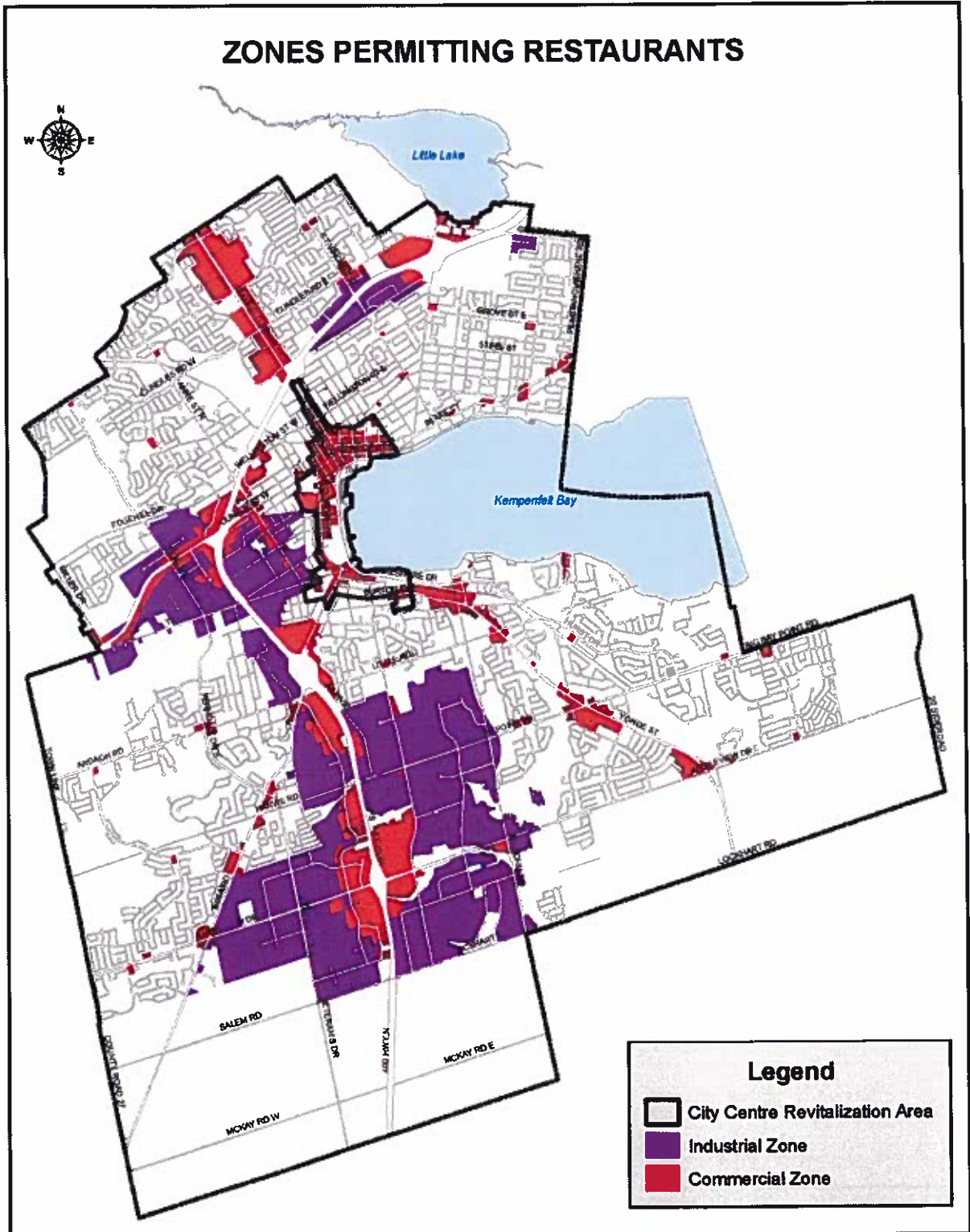
LINKAGE TO 2010-2014 COUNCIL STRATEGIC PLAN

75. The recommendation(s) 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
76. 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.
77. The recommended changes will address concerns that have been repeatedly raised by neighbourhoods and residents living in the vicinity of the downtown.
78. The recommended process changes to applications for future residential development will manage expectations and enable pro-active consideration of impacts of non-residential uses permitted in the downtown at the design stage.

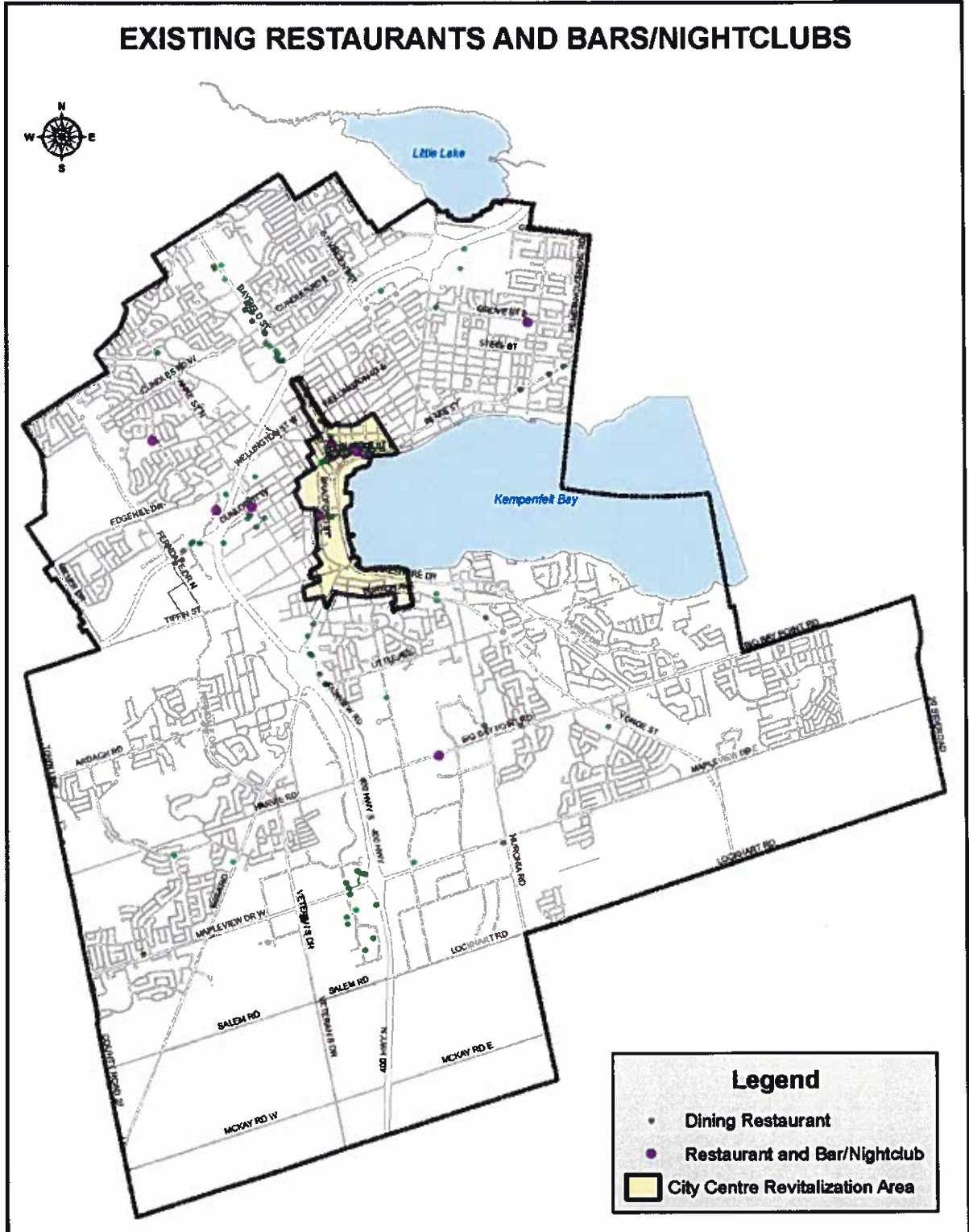
Schedule 1



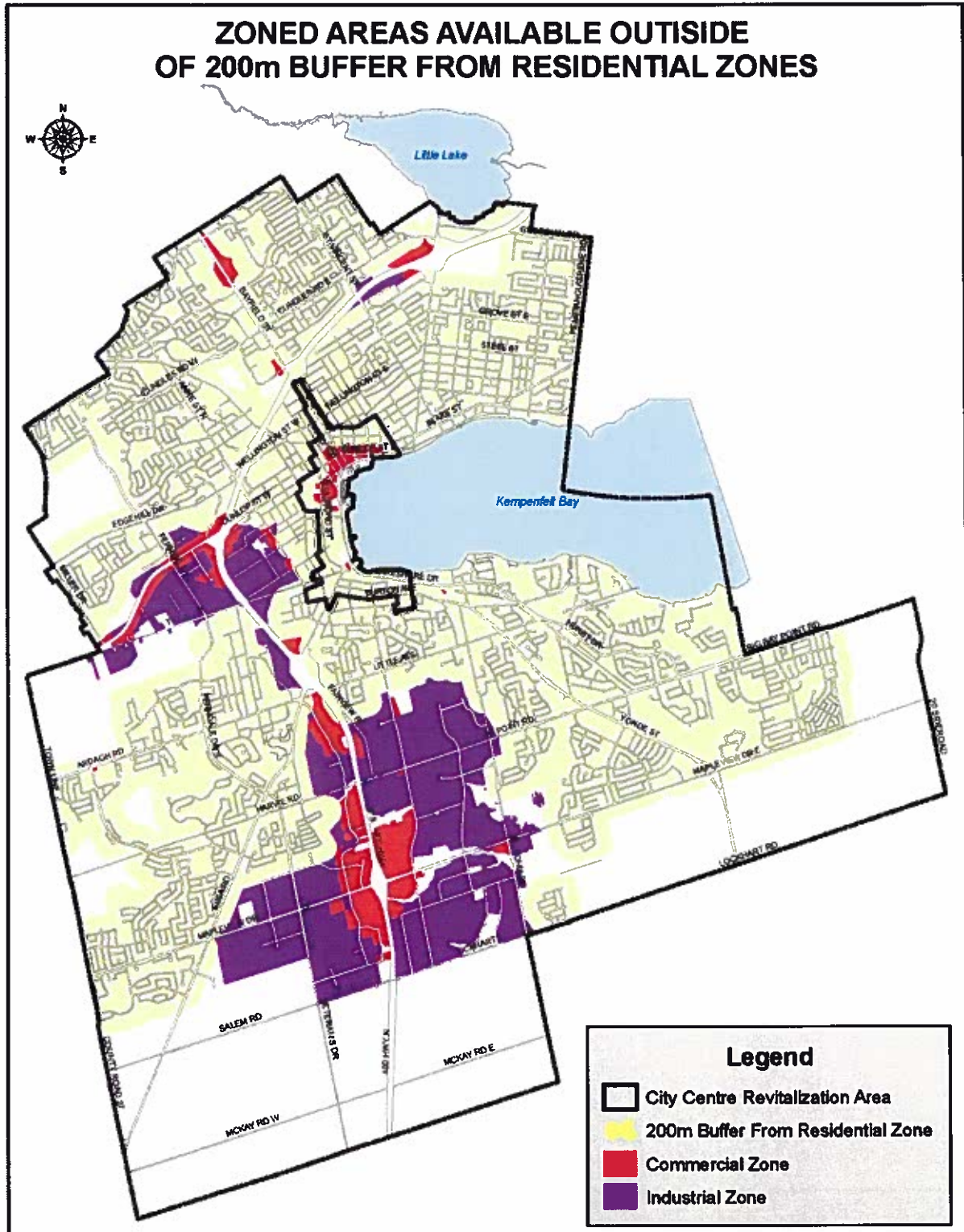
Schedule 2



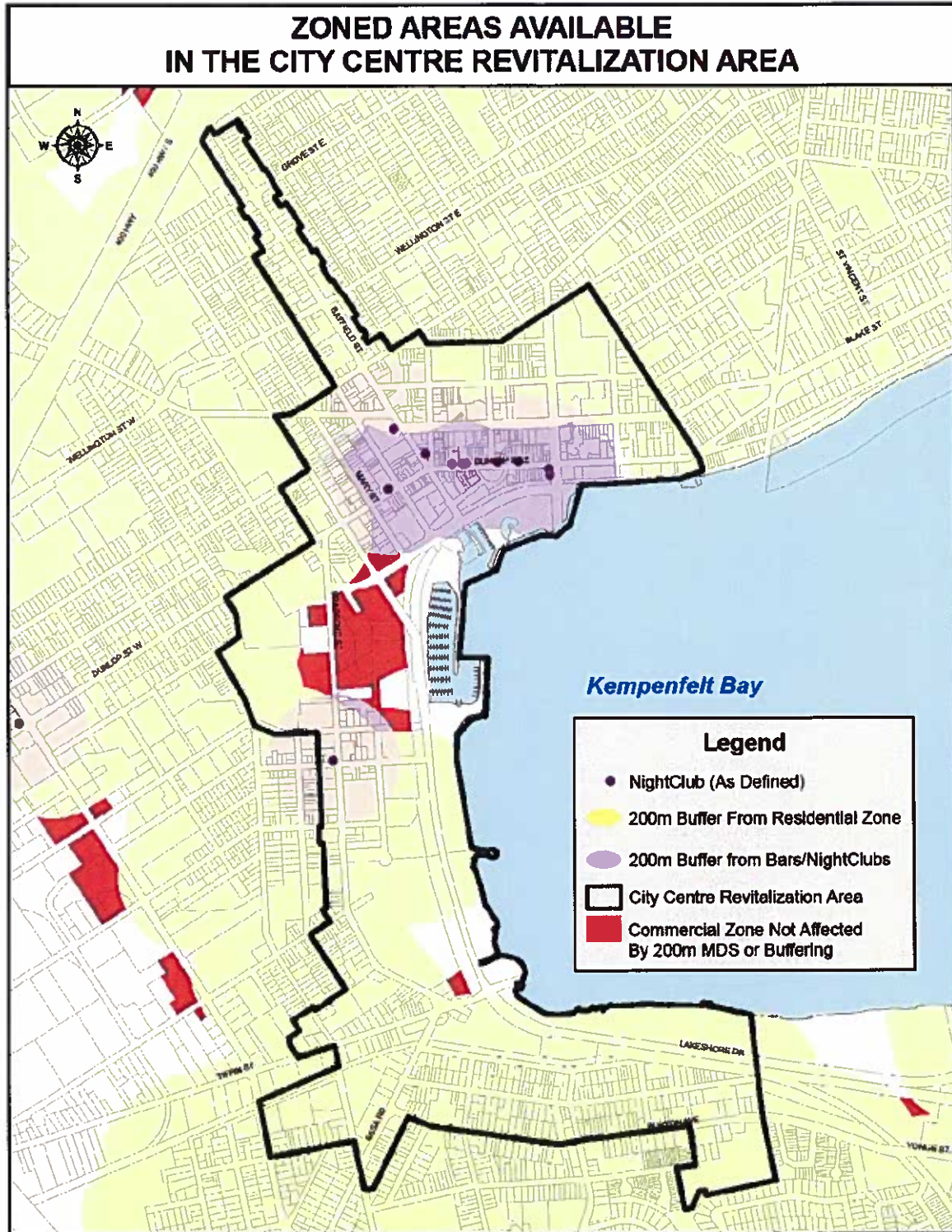
Schedule 3A



Schedule 4



Schedule 5



APPENDIX "A"

Summary of Key Themes in Other Zoning By-laws

1. The Kingston, Kitchener and Hamilton zoning by-laws were similar to that of the City of Barrie in that they only provided a definition for restaurants, which included licensed establishments such as bars, taverns and nightclubs. A number included a definition for restaurants and nightclubs (Ajax, Burlington, Mississauga, Oakville), and/or Restaurants, taverns, bars, and or nightclubs (Guelph, London, Oshawa), and Ottawa was the only by-law that included definitions for restaurants, bars and nightclubs.
2. Where a definition of a bar was provided, it typically referred to sale of beverages, or often specified sale of alcoholic beverages. Definitions for nightclubs typically included reference to a dance floor or other forms of live entertainment, sometimes included reference to live or pre-recorded music, and in some cases referred to sale of beverages or alcoholic beverages.
3. With respect to definitions, Guelph's zoning by-law is notably different in that it defines licensed establishments being licensed under the LLBO. In addition, the definition of a tavern in the Guelph zoning by-law refers to "a place used or designed to be used for the gathering of persons in which liquor is offered for sale or sold and includes a bar, nightclub and the like, and includes a restaurant in which liquor is offered for sale or sold beyond 12:01 am."

Distance Separation and Other Criteria

4. The City of Ottawa was the only example found that applies a 100m minimum distance separation between nightclubs and bars which are greater than 250m². This restriction applies to a localised area within the downtown which is referred to as the "By Ward Market Area." This area constitutes approximately 6 city blocks. Other regulations specifically applicable to the "By Ward Market area" include a 100m minimum distance separation of a nightclub or bar from any institutional, primary residential and residential exception zones. Additional zoning restrictions that apply to the "By Ward Market Area" include a maximum floor area of 500m² permitted for nightclubs and bars and further that no bar or nightclub can abut one another on the same street. Where bars or nightclubs are interconnected by an internal passageway used by patrons and staff, the floor area shall be calculated on the combined/total area.
5. The By Ward Market Area is an active lively entertainment area which includes a street that has been "pedestrianised" and which is characterised by a market area and restaurants spilling out onto patios along part of its length.
6. Other restrictions for these establishments included setbacks from sensitive zone categories such as institutional and residential zones. The City of Mississauga's by-law included the greatest setback requirement of 800m from residential areas, and Burlington applied a 45m separation of restaurants and nightclubs from certain sensitive downtown uses including the Downtown Mixed use Residential (DRM) zone and the Downtown Mixed use Lakeshore (DRL) zone. Kitchener's by-law requires outdoor patios to be set back 30m from residential zones.
7. Restrictions on capacity (maximum number of persons) or size (max floor area) for restaurants/patios, nightclubs, dance floor areas and bars either applied in general or specific to the establishment or location as follows:
 - a. Burlington Downtown - maximum capacity of restaurants- 500 persons.
 - b. Burlington - definition of a nightclub specifies a minimum dance floor area of 10m².
 - c. Guelph Central Business District (CBD) - maximum floor area of all licensed establishments- 380m².

- d. Mississauga - maximum floor area of nightclubs- 1,100m².
 - e. Oakville – the definition of a nightclub includes a maximum capacity of 1000 persons and a minimum dance floor area of 50m².
 - f. Ottawa By Ward Market – maximum floor area for bars and nightclubs- 500m².
8. Additional restrictions applicable to patios are summarised below:
- a. Burlington - maximum patio area: 50% of the restaurant area is exclusively for dining and shall not include any recreational or entertainment use or activity.
 - b. Guelph – maximum patio area: 50% of the licensed area or no more than 70 persons, whichever is the lesser.
 - c. Ajax – patios are required to be screened from sensitive uses by buildings, or separated from sensitive uses by arterial roads.

Location and where licensed establishments are permitted:

- 9. Mississauga and Oakville only permit Nightclubs in their employment areas. While Mississauga has a central business district zone (CBD), it cannot be characterized as a traditional downtown and is not comparable to the City of Barrie.
- 10. Burlington does not permit nightclubs in their Downtown Mixed Use Centres, but permits restaurants with a maximum capacity of 500m² in the downtown.
- 11. Guelph restricts the size of all licensed establishments in the CBD area to a maximum size of 380m².

APPENDIX "B"

Lively Streets



APPENDIX "C"
Occupant Load Numbers

Name	Downtown	Capacity (Number of Persons) ⁽ⁱ⁾	Patios Capacity	Totals	Maximum Occupant Load based on Floor Area or other Building Code Parameters ⁽ⁱⁱ⁾
The Ranch*	56 Bayfield St.	1014	-		1239
The Roxx*	46 Dunlop St. W.	1200	-		1043
Queens Hotel*	94 Dunlop St. E.	659	216	875	919
The Bank*	66 Dunlop St. E.	556	-		558
Mansion Nightclub*	34 Dunlop St. E.	350	-		358
Kenzington's*	40 Dunlop St. E.	280	-		280
At the Five	10 Dunlop St. E.	130	50	180	235
Club Ash*	24 Dunlop St. E.	341	-		Not available
Hooters Restaurant	5 Mulcaster St.	236	Not available		190
Tiffs Bar	130 Dunlop St. E.	165	114	279	165
British Arms Pub	29 Dunlop St. E.	256	-		100
Flat Iron Grill*	31 Bayfield St.	Not available	-		165
Mullies Bar/Grill	17 Mulcaster St.	145	-		148
Manhattan's*	147 Dunlop St. E.	125	15	140	125
Fitzy's Crab Shack*	147 Dunlop St. E.	Not available			125
Doc Malone's*	118 Bradford St.	90	37	127	120
McReilly's Pub	82 Dunlop St. E.	108	0		88
		5655	432	6087	

⁽ⁱ⁾ Capacity – Number of Persons based on Fire Department Records

⁽ⁱⁱ⁾ Capacity based on Floor Area – Represent the maximum occupant load permitted under the OBC. This would be the lesser of one of the following: (Washroom capacity; Exit width capacity; Maximum Occupancy per sq. m; designed capacity stated by architect.)

* Denotes nightclubs as per the proposed definition, including establishments that include nightclub components (as defined), which may be in combination with restaurants, bars or taverns.

APPENDIX "D"

Preliminary Estimate Impact on Staff Resources

If Recommended Measures Are In Effect

At the initial stages of implementation within the first 3 months of the by-law being in effect additional staff resources not accounted for in the 2011 Workplan is expected to be needed for the following actions:

- a. Developing a database with existing licensed establishments and recording their capacities. (14 hours 1 Planning Technician, 3 hours Planner, 3 Hours Manager of Building Standards, 2 Hours each Zoning Administrator and Plans Examiner based on the assumption that most of this information has already been obtained).
- b. Developing Review and Comment protocols and establishing requirements for review of zoning conformity with respect to building permits, site plan applications, liquor license applications, business licensing applications, and the liquor license questionnaire, and developing a standardised methodology for calculating MDS, and tracking approved establishments and capacities to ensure consistent application of the standards. (14 hours each Zoning Administrator, Plans Examiner, Planner, Zoning By-law Enforcement staff, 4 hours By-law Enforcement staff, and 4 hours Downtown co-ordinator. Includes 1 working meeting to develop protocol and a follow up meeting to finalize).
- c. Responding to questions from the community and these establishments and explaining the by-law. (First 3 months: 2% of staff time may be dedicated by Planning and Zoning staff to respond to these questions).
- d. Investigation of complaints and reporting for the first 3 months 2% of relevant staff time may be dedicated to this issue.

APPENDIX "E" - Summary of Possible Tools to Address Issues

Measure/Tool	Issue						
	Crime	Noise	Crowding at 2:00 am and associated impacts such as noise and brews	Impacts on daytime commercial	Impacts on residential uses	Healthy balance and mix of uses	Dead storefronts
Increased Policing and Enforcement	-	✓	♦	x	♦	x	x
Minimum Distance Separation	-	x	♦	x	♦	x	♦
Zoning Regulations	-	x	♦	x	♦	x	x
Investigate Special Policy Area/AGCO	-	x	?	x	?	x	x
Investigate staggered closing hours, licensing provisions, conditions	-	?	?	x	?	x	x
Standardized Information form	-	x	x	x	?	x	x
Cameras	-	x	x	x	x	x	x
Lighting	-	♦	x	x	x	x	x
Exclusive Taxi area along Dunlop Street between Maple and Mulcaster Streets	-	x	♦	x	♦	x	x
Education and awareness building	-	♦	♦	♦	✓	✓	♦
Management Practices	-	♦	✓	♦	✓	♦	♦
Marketing, promotion and branding	-	x	x	♦	x	✓	✓
Design measures	-	♦	x	x	✓	♦	x
Manages expectations for new residential in Downtown (Community information map)	-	♦	x	x	✓	♦	x

LEGEND	
*	No impact
♦	Preventative. Limited, if any, short-term impact, possible long-term positive impact
✓	Will most likely have some positive effect
-	No causal relationship between issue and restaurant, bars, taverns and nightclubs
?	Requires further review