

Subject: Patio Innovation Program 2022

File Number: ACS2022-PIE-RHU-0005

Report to Transportation Committee on 2 March 2022

and Council 9 March 2022

**Submitted on February 15, 2022 by Kevin Lamer, Acting Manager, Right of Way,
Heritage and Urban Design Services**

**Contact Person: Laureen DiNardo, Coordinator, Public Realm Agreements and
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Ward: Citywide

Objet : Programme d'innovation lié aux terrasses de 2022

Dossier : ACS2022-PIE-RHU-0005

Rapport au Comité des transports

le 2 mars 2022

et au Conseil le 9 mars 2022

**Soumis le 15 février 2022 par Kevin Lamer, Gestionnaire par intérim, Services des
emprises, du patrimoine et du design urbain**

**Direction générale de la planification, de l'immobilier et du développement
économique**

**Personne ressource : Laureen DiNardo, Coordonnateur, Ententes et permis du
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Quartier : À l'échelle de la ville

REPORT RECOMMENDATIONS

That Transportation Committee recommend Council:

- 1. Delegate authority to the Manager, Right of Way, Heritage and Urban Design, in consultation with the Director of Traffic Services, together with the Director of Roads and Parking Services, to:
 - a. Authorize the closure of segments of any City of Ottawa road as a temporary measure and waive the associated fees through to January 1, 2023, as part of the City of Ottawa's economic recovery efforts; and**
 - b. Limit this delegation of authority to only be exercised where there is written request from the Business Improvement Area for the given geographic area, or in the circumstance where a Business Improvement Area does not exist, 2/3 of the business owners on each block segment approve of the road closure as provided in writing to the Manager and the Directors listed above;****
- 2. Approve the temporary amendments to the Right of Way Patio By-law 2017-92 for 2022 only, so that:
 - a. All Right of Way patio permits issued in 2022, will be subject to a closure of 2 AM; and**
 - b. An applicant to a Café Seating Patio Permit may request an unlimited amount of Café seating permits (to expand beyond the four table, eight seat cap) where space permits.****
- 3. Approve the application of the provisions of the Right of Way Patio By-law No. 2017-92 pertaining to café seating permits to pop up retailers for 2022 only to allow business owners to establish along the frontage of their business a retail pop up;**
- 4. Approve the funding of a summer student position in By-law and Regulatory Services by the Right of Way, Heritage and Urban Design Services to provide support and proactive enforcement of the 2022 Patio Innovation program; and**
- 5. Direct staff to review and report back to Committee and Council with recommendations for permanent amendments to relevant by-laws in**

advance of the 2023 patio season based on the changes to the patio program with the inception of the Patio Innovation Program in 2020.

RECOMMANDATIONS DU RAPPORT

Que le Comité des transports recommande au Conseil d'approuver ce qui suit :

1. **Déléguer au gestionnaire des Services des emprises, du patrimoine et du design urbain, en consultation avec le directeur des Services de la circulation et le directeur des Services des routes et du stationnement, les pouvoirs suivants :**
 - a. **Autoriser la fermeture temporaire de tronçons de n'importe quelle rue d'Ottawa et annuler les frais y afférents jusqu'au 1^{er} janvier 2023, dans le cadre des efforts de relance économique de la Ville; et**
 - b. **Que ce pouvoir délégué ne soit exercé qu'avec le consentement écrit de la zone d'amélioration commerciale (ZAC) du secteur géographique visé ou, en l'absence de ZAC, à la condition que les deux tiers des propriétaires d'entreprises de chaque tronçon d'îlot donnent leur approbation écrite de la fermeture de rue au gestionnaire et aux directeurs susmentionnés.**
2. **Approuver les modifications temporaires au Règlement régissant les terrasses sur emprise n° 2017-92 pour l'année 2022 uniquement, de telle sorte que :**
 - a. **tous les titulaires de permis de terrasse sur emprise délivrés en 2022 devront fermer à 2 h; et**
 - b. **un requérant de permis de petite terrasse de café puisse demander un nombre illimité de permis de petite terrasse de café (afin d'avoir plus de quatre tables et huit chaises) s'il dispose de l'espace nécessaire.**
3. **Approuver l'application des dispositions du Règlement n° 2017-92 sur les terrasses d'emprise de passage relatives aux permis de sièges de café pour les détaillants éphémères pour 2022 uniquement pour permettre aux propriétaires de commerce d'établir le long de la façade de leur commerce un commerce éphémère ;**
4. **Qu'un poste de stagiaire d'été aux Services des règlements municipaux, visant à soutenir le Programme d'innovation lié aux terrasses de 2022 et**

d'assurer de manière proactive le respect de la réglementation s'y rapportant soit financé à partir des recettes globales générées par les SEPDU.

- 5. Enjoindre au personnel de passer en revue les modifications permanentes apportées aux règlements pertinents, et de rendre compte à leur sujet, compte tenu des modifications apportées au Programme d'innovation lié aux terrasses lors de sa création en 2020. Ces modifications seraient apportées en amont de la saison des terrasses de 2023.**

EXECUTIVE SUMMARY

As businesses continue to navigate the pandemic and economic uncertainty, Right of Way, Heritage and Urban Design (ROWHUD) is bringing forward its recommendations for the 2022 Patio Innovation Program. The recommendations are similar to the 2021 program with the goal of supporting economic recovery. The recommendations include amending the Right of Way Patio By-law No. 2017-92 (ROW Patio By-law) to allow a consistent 2 AM closing time for all Right of Way (ROW) patios; allowing unlimited café seating permits to support additional seating along a business frontage; apply the café seating provisions of the Right of Way Patio By-law to retailers to support pop up vending in the Right of Way and ROWHUD funding a summer student position in By-law and Regulatory Services (BLRS) for proactive enforcement of the patio program. Similar to the past two seasons, the 2022 Patio Innovation program is also recommending that delegated authority be granted to the Manager, Right of Way, Heritage and Urban Design in consultation with the Director of Traffic Services together with the Director of Roads and Parking Services for seasonal road closures.

In order to ensure the continued success of the Patio Innovation program, staff will continue to engage in proactive enforcement of ROW patios using a variety of measures. These measures include a BLRS summer student position funded by ROWHUD, the development of a Good Neighbour guidance document as well as using the stepped enforcement strategy that was developed in 2021.

At the end of the 2022 patio summer season, staff will review and report on potential permanent amendments to relevant by-laws based on the changes to the patio program with the inception of the Patio Innovation program in 2020. These potential amendments would be made in advance of the 2023 Summer Patio Season.

RÉSUMÉ

Alors que les entreprises sont toujours confrontées à la pandémie et à l'incertitude économique, les Services des emprises, du patrimoine et du design urbain (SEPDU) proposent leurs recommandations pour le Programme d'innovation lié aux terrasses de 2022. Ces recommandations sont similaires à celles du programme de 2021 et visent à soutenir la reprise économique. Elles proposent notamment de modifier le Règlement régissant les terrasses sur emprise (2017-92) en autorisant une heure de fermeture uniforme fixée à 2 h pour toutes les terrasses sur emprise, en autorisant un nombre illimité de permis de petites terrasses de café afin de permettre la présence d'un plus grand nombre de places assises sur les façades des commerces, en assurant l'application des dispositions sur les petites terrasses de café dans le Règlement régissant les terrasses sur emprise aux commerçants afin de soutenir la vente au détail temporaire dans les emprises et en permettant aux SEPDU de financer un poste de stagiaire d'été aux Services des règlements municipaux afin d'assurer de manière proactive le respect de la réglementation portant sur le Programme d'innovation lié aux terrasses. Comme pour les deux saisons précédentes, le Programme d'innovation lié aux terrasses de 2022 recommande également la délégation de pouvoirs au gestionnaire des Services des emprises, du patrimoine et du design urbain, en consultation avec le directeur des Services de la circulation et le directeur des Services des routes et du stationnement, en ce qui concerne les fermetures de rue saisonnières.

Afin d'assurer la réussite continue du Programme d'innovation lié aux terrasses, le personnel entend continuer de veiller de manière proactive au respect de la réglementation portant sur les terrasses sur emprise, grâce à l'application de diverses mesures. Mentionnons à titre d'exemple un poste de stagiaire d'été aux Services des règlements municipaux financé par les SEPDU, l'élaboration d'un document sur le bon voisinage ainsi que l'application de la stratégie d'application progressive de la réglementation élaborée en 2021.

Au terme de la saison 2022 des terrasses estivales, le personnel passera en revue les modifications permanentes pouvant être apportées aux règlements pertinents, et rendra compte à leur sujet, compte tenu des modifications apportées au Programme d'innovation lié aux terrasses lors de sa création en 2020. Ces éventuelles modifications seraient apportées avant la saison 2023 des terrasses estivales.

BACKGROUND

In March 2020, the COVID-19 pandemic and declaration of a State of Emergency in Ontario resulted in the mandatory closure of all non-essential workplaces and businesses. These closures had an immediate and detrimental impact on Ottawa's economy including a sharp decline in business revenues, employment and economic activity. In response, the city undertook several actions to help inform and guide Ottawa's economic response and recovery efforts. The Mayor's Economic Partners Task Force, led by Mayor Watson and co-chaired by Councillors Dudas and El-Chantiry, was established at the outset of the pandemic to identify emerging issues and opportunities to support the local business community.

In addition to the Mayor's Economic Partners Task Force, the Economic Recovery Task Team, consisting of staff from various City service areas, was initiated to coordinate a strategy and undertake a series of measures in support of the city's economic recovery. The strategy, based on data and research, provides clear objectives aimed at mitigating the impacts of the pandemic by delivering a series of City process improvements, tools, and programs.

As part of the City's COVID-19 economic recovery plan, City staff developed innovative and supportive solutions to keep Ottawa businesses and neighbourhoods vibrant through 2020 and 2021. In addition, the Province of Ontario, through the Alcohol and Gaming Commission of Ontario (AGCO), released a suite of exemptions related to the licensing of establishments to support businesses and facilitate a streamlined approach for outdoor patio expansions and for the first time, permitted the serving of alcohol for café seating (bistro-style seating). The province has extended these exemptions for the full calendar year of 2022.

DISCUSSION

Over the course of 2020, a successful Patio Innovation Program was developed which included a series of measures to encourage new restaurant patios and café seating, as well as retail vending in the right of way, by reducing or waiving fees and accelerating approvals. The initiatives in 2020 were designed to be as nimble as possible, aligning to the fluctuating restrictions as a result of COVID-19.

With City Council's support and approval, the following are the several initiatives under the umbrella of the Patio Innovation Program which were implemented in 2020 and carried over to 2021:

- Waiving the monthly rates (summer and winter) for right of way (ROW) patios and café seating permits (which has been continued for 2022 through Council's approval of the 2022 budget);
- Eliminating the cap on the quantity of café seating tables permitted per business;
- Streamlining the circulation process for new ROW patio permit applications;
- Developing a new retail vending program to allow retailers to vend on their business frontages;
- Partnering with Building Code Services to develop a streamlined system to review inquiries and building permit applications for tents and awnings related to patios;
- Partnering with Traffic Services to undertake the closure of several city streets as pilot projects to facilitate patio expansions;
- Funding of a summer student position in By-law and Regulatory Services (BLRS) to support proactive enforcement associated with patios in 2021.
- Amending the Zoning By-law for patios on private property to waive the 30-metre setback requirement from residential zones along with other provisions and introduce a registration and property owner notification system.

As noted above, the waiving of monthly fees for 2021 for ROW patio permits and the implementation of a Temporary Zoning By-law amendment for patios on private property was completed in 2020 and carried into 2021. On December 8, 2021, Council approved an amendment to the Zoning By-law permanently waiving the 30-metre setback requirement from residential zones. The subject Zoning By-law amendment came into full force and effect as of January 6, 2022. Patio fees for the 2022 season have also been waived as part of the 2022 budget.

Staff are recommending that the remainder of the above noted initiatives be extended for the 2022 ROW patio season as set out below. Similar to last year, ROWHUD will also fund a student position in BLRS to support proactive enforcement. The funding of this position is the only anticipated financial implication associated with these recommendations, save and except the potential for some minor revenue from the continuation of the retail vending program, which was introduced for the first time in 2020; and the waiving of fees for temporary road closure application fees until January 1, 2023.

The extension of the Patio Innovation Program will allow for continued flexibility given uncertainty associated with the COVID-19 pandemic in 2022. There is a continual need for innovative and supportive solutions to keep Ottawa businesses and neighbourhoods vibrant through 2022. Over the course of 2022, staff will review and report on potential options for permanent amendments to the relevant by-laws and the potential for a permanent budget funded summer student resource if required based on the 2022 Patio Innovation program in advance of the 2023 patio season.

Road Closures

One of the successful pilots that were undertaken in 2020 and 2021 was the variety of road closures to support the expansion of outdoor dining. Several street closures were undertaken as pilot projects to facilitate patio expansions:

- Somerset Street West from Bank to O'Connor; Fridays to Sundays
- Flora Street; Fridays to Sundays
- Frank Street at Bank Street for approximately 15 metres
- Clarence Street from Dalhousie Street to William Street
- ByWard Market Square from York Street to Clarence Street
- York Street from ByWard Market Square to Sussex Drive (2020)

In addition, William Street from George Street to York Street was closed for the season to facilitate physical distancing as part of a continuing public realm pilot project from 2019. Bank Street from Queen Street to Catherine Street was closed every Saturday for the month of July to facilitate physical distancing. This pilot, led by the Bank Street Business Improvement Area (BIA), proved to be so successful that the BIA extended the Saturday closures until the end of October 2020. The Bank Street closures continued throughout the summer and fall of 2021.

Council provided staff the delegated authority for road closures in 2020 and 2021. Staff are recommending that the delegated authority to approve road closure requests be continued for 2022. Staff are also recommending that the associated temporary road closure application fees be waived for 2022. This will allow for continued flexibility and provide staff with an opportunity to review and report on potential options for permanent amendments to the Special Events on Public and Private Property By-law 2013-232, to consider seasonal road closures and to recognize events of less than 500 attendees.

This review will be based on the information collected during the three-year Patio Innovation program and will be provided in advance of any potential seasonal road closures in 2023.

Closing Times for ROW Patios

At the time of implementing several of the above noted 2020 initiatives, the subject of closing times for ROW patios was raised at Transportation Committee and Council.

In 2017, a new ROW Patio By-law was enacted, which requires an 11 PM closing time for those new ROW patios within 30 metres of a residential or mixed residential/commercial zone. This requirement in the by-law has resulted in inconsistencies with closing times for new patios that are required to close at 11 PM, where historical permit holders (within the same area) are allowed to continue operating under the pre-2017 by-law restrictions (2 AM closing times). Other areas, such as Elgin Street, have been permitted to close at 2 AM.

It is also noted that closing times for patios on private property cannot be regulated through zoning and thus, for those businesses with patios on private property, even in the same area as ROW patio permit holders, the closing time is regulated through their liquor license (up to 2 AM).

At the July 15, 2020, Council meeting, Council approved a motion to permit all ROW patios within the boundary of the ByWard Market to close at 1 AM to help regularize the closing times for the area where the majority of the ROW patio permits are issued. Council directed staff to report back regarding noise complaints in August 2020 as well as to provide a recommendation proposal for the Fall regarding hours of operation for patios in the ByWard Market. Council directed staff that a minimum one-week consultation period be undertaken with businesses on the matter of any revision to the by-law for 2021.

In August 2020, staff reported back to Council and detailed the limited noise complaints and compliance issues for ROW patios within the ByWard Market and recommended the continuation of the 1 AM closing time for the remainder of the 2020 season. At the August meeting, staff advised Council that the matter of hours of operation of right of way patios would be reviewed for the 2021 patio season.

One of the concerns that has been raised in the past with respect to closing times has been noise. All patios, regardless of their location (ROW or private property), are subject to the City's Noise By-law, which is the most effective and consistent tool for the

regulation of noise. By-law Services has provided staff with a detailed log of noise complaints related to outdoor patios for 2020 and 2021. Based on the data compiled for the 2021 season, cross-referenced with the 167 ROW patios and café seating permits and the 104 registered patios on private property, there were 30 locations with reported noise complaints for outdoor patios, 17 of the establishments have ROW patio permits (10 per cent of permit holders), and 13 locations were patios on private property. Staff will be directly reinforcing noise rules and regulations and their associated enforcement with patio operators who received a noise complaint in 2021 in advance of the issuance of their 2022 permit.

Another concern raised related to closing times has been the inconsistent and uneven local economic situation created between businesses and their own operating logistics between varying closing times between indoor and outdoor dining for the same establishment. As per Council's direction to staff at the July 2020 Council meeting, staff consulted with businesses regarding closing times. Staff surveyed the ROW permit holders to inquire about the 2020 patio season and specifically review the topic of closing times. Overwhelmingly the response has been that businesses would prefer that their ROW permits allow for a closing time that is consistent with their indoor dining closing time of their establishment. The majority of permit holders indicated that their indoor dining closing time is 2 AM.

Permit holders have also noted the difficulties regarding the logistics of different indoor and outdoor dining closing times for the same establishment. This difference in closing times coupled with the many fluctuating restrictions due to COVID-19 compounded these challenges and negatively impacted businesses especially during the restricted times when indoor dining was closed. During the periods where indoor dining was closed, these establishments could only operate outdoor dining and were subject to the earlier closing time as required by their ROW permit despite their later indoor dining operating hours.

Based on the information above and recognizing that future local economic resilience is an important consideration over the next six to 12 months and beyond, and that the restrictions related to COVID-19 and indoor and outdoor dining may be subject to fluctuation, Council approved the closing times for all ROW patio and café seating permit holders be extended to 2 AM for the 2021 season as a pilot. This extended closing time provided staff with the opportunity to continue to work closely with our colleagues in By-law Services, BIAs and local businesses to determine a recommended approach for the future, but most importantly provide local businesses with certainty for the 2021 patio season. As businesses were not able to take advantage of the 2 AM

closure until mid summer due to the Provincial restrictions; the limited noise complaints associated with ROW patio/café seating permits and the continuation of proactive enforcement including the funding of a summer student position in BLRS and the development of a good neighbour guideline for patio operators staff are recommending that the closing times for all ROW patio and café seating permit holders be extended to 2 AM for the 2022 season. This will allow for continued consistency and provide staff with an opportunity to review and report on potential options for permanent amendments to the ROW Patio By-law No. 2017-92 and to consider permanent alternatives to the current closure requirements for ROW patios. This review will be based on the information collected during the three-year Patio Innovation program in collaboration with By-law Services and will be provided in advance of the 2023 patio season.

Café Seating

The recommendation to remove the capacity restriction for café seating is a continuation from one of the patio initiatives undertaken in 2020 and 2021. The AGCO exemptions includes permitting alcohol to be sold at café seating as long as permits are obtained from the municipality. As a result of the AGCO exemptions and the periodic restrictions on indoor dining, the City had its largest café seating program ever in 2020 and it was even more successful in 2021. These AGCO exemptions have been extended for the entirety of 2022.

Additionally, to support vending within the right of way, staff recommend the continuance of retailer pop up permits for the 2022 season. These pop ups will be subject to the café seating provisions of the Right of Way Patio By-law to allow business owners to establish a retail pop up along the frontage of their business.

Enforcement Process for ROW patios

The Patio Innovation program has a number of strategies to support a proactive enforcement approach. These strategies include a dedicated BLRS summer student, the development of the Good Neighbour guidance document to be shared with all patio operators, updating of the City's website with relevant information for the 2022 season as well as working with operators who received a noise complaint in 2021 in advance of the issuance of their 2022 permit. In addition, the ROW Patio By-law provides staff the authority to include conditions on ROW patio permits and, if necessary, revoke the permit. These conditions can include such topics as closing times for patios, adherence to all other municipal by-laws and special conditions specific to a location. Throughout the patio season, staff are in regular contact with By-law to ensure complaints regarding

ROW patios are addressed. Staff have developed a stepped enforcement strategy where, for the first offence a warning is issued coupled with education on the ROW patio program, the second offence will result in changes to the ROW patio permit to require the patio to close at 11 PM and the third offence will result in revocation of the ROW patio permit. Only three formal warnings were issued by ROWHUD in 2021 with no further enforcement action required. The balance of noise complaints was handled by BLRS.

It should be noted that Provincial restrictions supersede any ROW patio conditions such that, if the province restricts closing times for outdoor dining which are earlier than what is permitted in the ROW Patio By-law (or subsequent permit), the Provincial restrictions apply.

RURAL IMPLICATIONS

This report has City wide implications. In 2021 there was one ROW patio permit issued in the rural area.

CONSULTATION

Staff undertook targeted consultation with business owners with respect to the above noted recommendations. A survey of existing ROW patio and café seating permit holders was conducted regarding closing times and the 2020 outdoor dining season. In addition, due to the concentration of ROW patio permit holders and the pilot road closures undertaken in the ByWard Market, staff met with the Lowertown Community Association in the ByWard Market to obtain feedback on the various initiatives that were undertaken in the ByWard Market. As a result of this consultation, staff developed an internal process to receive, review and undertake road closures and have designated staff to oversee the various initiatives in the ByWard Market so that a more coordinated approach was achieved in 2021. Staff are consulting with various stakeholders in preparation for the 2022 season which includes the various BIAs. In addition, various stakeholders in the ByWard Market including Lowertown Community Association were consulted to develop a ByWard Market specific ROW Patio Plan for targeted locations in 2022.

COMMENTS BY THE WARD COUNCILLORS

This is a city-wide report – not applicable.

LEGAL IMPLICATIONS

There are no legal impediments to Committee and Council's approval of the recommendations of this report.

RISK MANAGEMENT IMPLICATIONS

There is a risk of increased noise after 11 PM as a result of this change. However, as mentioned above, all patios will still be subject to the existing Noise By-law (2017-255) and the Patio By-law 2017-92. Businesses that receive complaints shall be subject to the enforcement provisions within these two by-laws and may have conditions imposed on their patio permits (ex: patio must close at an earlier time and, if necessary, have their patio permit rescinded).

ASSET MANAGEMENT IMPLICATIONS

There are no asset management implications associated with the recommendations of this report.

FINANCIAL IMPLICATIONS

Recommendations 1 and 3: Waiving temporary road closure fees for the BIAs will result in a minor loss of revenue. It is anticipated that this will offset by minor incremental revenues from the retail pop-up application fees.

Recommendations 2 and 5: There are no direct financial implications.

Recommendation 4: Funding is available from within ROWHUD to fund the summer student in 2022.

ACCESSIBILITY IMPACTS

The ROW Patio By-law states that all patios are conditional upon the General Manager's approval of its dimensions and proposed location within the right of way and such an approval shall be subject to the following considerations:

- Applicants must ensure a minimum pedestrian clearway of 2 metres at all times
- Compliance with the requirements of the City of Ottawa's Accessibility Design Standards, including cane-detectable delineation around the patio's border

As part of the permit application process, operators must demonstrate that their patios are accessible. Accessibility is verified by City staff at the application stage, and this will

continue in 2022. Additionally, when new or expanded patios are considered, every effort is made to maintain a straight pedestrian clearway (footpath). Consideration is given for street furniture and other barriers when ensuring a straight pedestrian path of travel.

Staff consulted with the Accessibility Advisory Committee on the Patio Innovation Program in the spring of 2021. Accessibility concerns are monitored and responded to by ROW staff, with support from the Accessibility Office.

Road closures are also assessed with an accessibility lens. Impacts to on-street parking, maintaining access to sidewalks, curb cuts and Accessible Pedestrian Signals (APS) are considered as part of a street closure application. This will continue in 2022.

ECONOMIC IMPLICATIONS

The proposed continuation of the Patio Innovation Program in 2022 will have a positive impact on small businesses and main streets across the city impacted by the COVID-19 pandemic and ongoing Province of Ontario restrictions. The program will support increased business revenues, new employment, and main street vibrancy while helping to mitigate the continuing uncertainty facing small business owners, particularly restaurants, retailers, and small specialty shops. The City's leadership in developing and delivering innovative and supportive solutions to keep Ottawa businesses and neighbourhoods vibrant through the response and recovery stages of the pandemic has created positive momentum as the city moves toward economic rebound and small business and hardest hit sector recovery.

CLIMATE IMPLICATIONS

There are no climate change implications.

ENVIRONMENTAL IMPLICATIONS

There are no environmental implications.

INDIGENOUS GENDER AND EQUITY IMPLICATIONS

There are no indigenous gender and equity implications.

TERM OF COUNCIL PRIORITIES

This project addresses the following Term of Council Priority:

- Economic Growth and Diversification and Thriving Communities

DISPOSITION

Right of Way Branch, Right of Way, Heritage, Urban Design, Planning, Real Estate and Economic Development Department prepare the implementing by-law and forward to Legal Services

Legal Services, Innovative Client Services Department to forward the amending by-laws to City Council for enactment.