

## **RESTAURANT LICENSED AND FOOD SERVICE ONLY – NEIGHBOURHOOD**

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### **EXECUTIVE SUMMARY**

This report was prepared to respond to Council's request to investigate restaurant sizes, particularly in relation to small restaurants, along with the rules associated with them. While restaurants have the potential to create many positive impacts on a neighbourhood such as economic diversity and vibrancy, the same potential exists to create negative impacts, such as social disorder, noise, traffic, and parking problems. The balance between positive and negative impacts is in part managed by regulating restaurant size and setbacks from residential parcels in some land use districts. These factors are analyzed in this report.

Due to the timing of this report, Administration undertook limited engagement with affected industry, community and public stakeholders. An extensive examination, however, of development permit approvals and refusals, the history of the rules associated with restaurants, and the management of the rules since they were implemented was conducted for a twenty year time period. Research demonstrates that the majority of restaurants function appropriately and meet the purpose for commercial, residential and industrial districts. Analysis also indicates that the impacts of restaurants have been successfully managed through the rules associated with the uses. The current approach to managing restaurants and their potential impacts suggests that Land Use Bylaw (LUB) 1P2007 rules currently promote the development of different sized restaurants to meet the intent of the environment they are located in without undue impacts on surrounding neighbourhoods and communities.

### **ADMINISTRATION RECOMMENDATION(S)**

That the SPC on Planning and Urban Development recommend that Council receive this report for information.

### **RECOMMENDATION OF THE SPC ON PLANNING AND URBAN DEVELOPMENT, DATED 2013 DECEMBER 04:**

That Council table Report PUD2013-0471 to the 2014 January 15 Regular Meeting of the SPC on Planning and Urban Development.

Excerpt from the Minutes of the Regular Meeting of the SPC on Planning and Urban Development:

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"AMENDMENT, Moved by Councillor Farrell, that Councillor Carra's proposed motion to table Report PUD2013-0471, be amended by deleting the date "2014 January 15", and by substituting with the date "2014 February 12".

### **ROLL CALL VOTE:**

For:

D. Farrell, B. Pincott, A. Chabot

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Against:

G-C. Carra, D. Colley-Urquhart, P. Demong, J. Magliocca, R. Pootmans, W. Sutherland

MOTION LOST”

### **PREVIOUS COUNCIL DIRECTION / POLICY**

On 2013 July 17, Council directed Administration through NM 2013-22 “to investigate amendments to Bylaw 1P2007 to either amend an existing or establish a new restaurant district large enough to be viable for operators and unconstrained by regulations incompatible with the achievements of MDP targets for the development and redevelopment of neighbourhood-scaled complete communities.” and to report to the SPC on Planning and Urban Development no later than December 2013.

### **BACKGROUND**

Restaurants are regulated in the LUB by size categories which reflect the local, community and regional scales used in the Municipal Development Plan (MDP) to define different scales of activity centres. Small restaurants lend themselves to a local, neighbourhood scale and trade area, while medium sized restaurants have a larger trade area and are often situated on corridors within larger communities or bordering multiple communities. Large restaurants serve as a regional draw and are typically located in areas such as power centres and high traffic volume areas. It should be noted however there are instances in the City where small or neighbourhood scaled restaurants attract a city-wide patronage.

The size distinction allows for small restaurants to have minimal constraints or rules associated with it because the impacts of the use on surrounding areas are minimal. Correspondingly, the size distinction also allows Administration to impose rules on larger restaurants to mitigate the impacts associated with larger restaurants, while still allowing for the amenity in a variety of contexts.

In 1998, LUB 2P80 was amended to address off-site impacts of licensed restaurants. This resulted in the classification of any food business serving alcohol to a ‘Restaurant/Drinking Establishment’ use and all other food service uses to a ‘Restaurant Food Service Only’. Other new rules that were approved in 1998 by Council included:

- Limiting the size of all food and drink uses in all land use districts adjacent to residential districts to 75 square metres of net floor area;
- Limiting all food and drink uses in local commercial land use districts to 75 square metres of net floor area;
- Listing drinking establishments and licensed restaurants as discretionary uses in local commercial districts; and
- Introducing site development and residential interface rules to mitigate impacts on adjacent residential districts.

In LUB 1P2007, distinctions were further made between restaurants, drinking establishments and nightclubs that previously did not exist. These were made because these three uses function very differently from one another in terms of hours of operation and operating practices,

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which could result in differing impacts on the community and surrounding uses. Because these uses have been broken out, there is the ability to review these uses on Development Permits (DPs) when one use changes to another. This allows us to better mitigate the impacts and assess the merits of each individual use. A diagram of the history of these uses, along with a best practice review from other municipalities, can be seen in Attachments 1 and 3 of this report.

The 75 square metre public area limit approximates a 60-seat restaurant using the Alberta Building Code requirement of 1.2 square metres of floor area per person for building occupancy. A 60-seat restaurant can garner upwards of 300 patrons a night, which was determined to be a suitable size for a neighbourhood restaurant, given the intent to attract a local patronage. While the potential for 300 patrons a night is significant, it was intended that many of them would come from the surrounding neighbourhood, (depending on the draw of the restaurant in terms of menu or atmosphere), less dependent on their vehicle to access the site and likely to return to the business due to the proximity to their residence. Administration's research also shows that restaurants in the local commercial districts were typically in this size range prior to the implementation of this rule in the LUB, showing that restaurants voluntarily established this size based on their needs.

LUB 1P2007 currently lists two uses as a "Restaurant", based on whether or not the business is licensed to serve alcohol. From these two groups (Food Service Only and Licensed) restaurants are broken down in to three categories (small, medium and large), which are based on the size of the public area. Public area is defined as the space that is accessible to the public; excluding the kitchen, washrooms, entrance vestibules, and the respective hallways accessing these areas. In neighbourhood districts (local, embedded into neighbourhoods), the maximum public area allowed for small restaurants is 75 square metres, while in community and regional districts, the maximum public area can range from 300 square metres or greater depending on the district.

Neighbourhood scale commercial parcels are small; typically contain between two and four separate uses, such as a small convenience food store, a dry cleaner, a small restaurant or takeout food service. The neighbourhood districts only allow for small restaurants in their list of uses. These districts are intended to be characterized by small scale neighbourhood developments in keeping with the scale of nearby residential areas. Specifically, the uses that are categorized as small are Restaurant: Licensed – Small and Restaurant: Food Service Only – Small (with use area limited to 75 square metres).

A medium sized restaurant (public area greater than 75 square metres) is not listed in the neighbourhood districts because the trade area or customers are from the broader community and region as opposed to the neighbourhood. An applicant wishing to develop a medium sized restaurant in a neighbourhood district may proceed with a land use redesignation to change the land use to allow a larger development. This process requires a public hearing and Council decision on the appropriateness of the development in that context. All other commercial districts allow medium or larger restaurants.

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The commercial districts in the LUB are divided according to context and intended market orientation. The smallest commercial district is the Commercial – Neighbourhood 1 (C-N1) district which intends to accommodate the immediate neighbourhood. From this point the districts move up to Community, and Regional scale. A district's list of uses and rules is structured to achieve the intent of the district. The table in Attachment 2 shows the restaurant uses listed in each land use district.

While restaurant size is not a rule that can be relaxed by the Development Authority, the LUB permits only small restaurants in two of eleven commercial districts. All other commercial districts permit larger restaurants.

### **INVESTIGATION AND ANALYSIS**

The Notice of Motion asked Administration to investigate two issues:

1. Increasing the maximum public area allowed for small sized restaurants, and
2. Investigating the regulations for restaurants.

In investigating these two issues, Administration examined several factors and impacts related to restaurants as explained below. These factors and impacts were gathered from both the Notice of Motion and informal meetings with a group of development and business representatives, as well as through informal discussions with community representatives. They include:

1. Increasing the maximum public area allowed for small sized restaurants:
  - a. The appropriateness of a larger public area based on the purpose of each district, and,
  - b. The financial viability of restaurants.
2. Investigating the rules in the LUB:
  - a. The separation distance from residential parcels,
  - b. The parking needs associated with different sized restaurants, and
  - c. The impacts of whether a restaurant is a permitted or discretionary use in the district.

As a whole, this analysis helps to illustrate the nature of restaurants and what the added impacts would be on the surrounding areas if the size of a small restaurant was increased.

#### **#1 – Increasing the maximum public area of small restaurants**

There are a number of factors when considering if the maximum public area of a small restaurant should be increased from 75 square metres.

##### **a. Appropriate Uses Based on the Purpose of the District**

Each land use district begins with a purpose statement that provides the defining characteristics of the district, the typical uses in the district, and typical locational criteria; further supported by rules within the district which help to create a particular environment. The district then lists the uses that are acceptable in that district. The uses listed in a district are intended to reflect the purpose of the district.

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For example, the Commercial – Corridor 1 (C-COR1) District allows for medium restaurants between 75 square metres and 300 square metres because the intent of the district is to cater to the needs of pedestrians in an environment that is expected to be frequented due to its appealing storefronts and abundance of commercial development. It does not allow for large restaurants over 300 square metres because of its high value on the pedestrian environment and the desire to create a space with multiple commercial units, active ground floors, and minimal emphasis on motor vehicles.

A small restaurant is the only listed restaurant use in the following districts:

- Commercial – Neighbourhood 1 (C-N1) district,
- Commercial – Neighbourhood 2 – (C-N2) district,
- Multi-Residential – High Density Low Rise (M-H1) district,
- Multi-Residential – High Density Medium Rise (M-H2) district,
- Multi-Residential – High Density High Rise (M-H3) district,
- Multi-Residential – Low Profile Support Commercial (M-X1) district,
- Multi-Residential – Medium Profile Support Commercial (M-X2) district,
- Industrial – Edge (I-E) district,
- Industrial – Redevelopment (I-R) district, and
- Special Purpose – University Research Park (S-URP) district.

Both C-N1 and C-N2 are intended for small scale commercial development with limited use sizes and types. Allowing a larger restaurant in these districts could create impacts that would detract from the purpose of the district. In terms of commercial districts, all except for the neighbourhood districts allow for restaurants larger than 75 square metres. In these districts, there are rules and limitations on restaurants in place to mitigate impacts, which are further discussed independently below.

In addition to commercial districts, increasing the size of small restaurants can have an effect on the City's intentions for industrial land. Currently, a number of industrial districts only allow for small stand alone restaurants, or medium restaurants which are intended to complement the existing industrial business community by being imbedded into buildings with other supportive uses. Increasing the size of small restaurants could result in bigger stand alone restaurants in industrial areas, which would be contrary to the intent of the purpose of the industrial districts and could potentially increase the ability for industrial land to be used for uses that do not support the surrounding industrial environment.

If a business owner wishes to have a restaurant larger than a small restaurant, and it is not a listed use in the district, they can apply for a land use redesignation. This process requires a public hearing and Council decision to determine if a new land use and the intention or purpose of the new land use is appropriate in that context.

While some districts prohibit restaurants over 75 square metres in order to create a particular environment, most commercial and industrial districts allow for larger size restaurants through a Development Permit process. The two commercial districts that prohibit larger restaurants

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ensure the local neighbourhood characteristics by doing so, and the prohibition of larger restaurants is necessary to achieve the intent of the local commercial districts, and to ensure the local vibrancy of a neighbourhood is maintained without adding unwanted nuisance issues

### **b. Financial Viability**

The Notice of Motion asks Administration to investigate financial viability of restaurants as it pertains to maximum size. Financially viability for a restaurant is affected by many factors, many of which are not affected by the land use bylaw, including:

- Competition
- Marketing
- Pricing
- Business strategy, menu, management

Administration analyzed restaurant size data before and after the implementation of maximum size rules in the LUB in 1998. Before and after 1998, the vast majority of food service only restaurants complied with the public area rule of 75 square metres. Before and after 1998 over two thirds of licensed restaurants complied with the 75 square metres public area rule. This seems to suggest that sufficient or optimum profit could be made with a restaurant 75 square metres or less in size. The other aspect of potential restaurant profit relates to leasing rates. It may be that large licensed restaurateurs can achieve higher rent profit for a landlord.

General discussions with the Canadian Restaurant and Food Services Association's Alberta lobbyist have confirmed that the financial viability of a restaurant is subject to multiple factors. The size alone of a restaurant does not ensure or prohibit financial viability.

While financial viability is necessary for any business, size alone does not determine restaurant viability, and data shows that, in the past, restaurateur's voluntarily created restaurants smaller than 75 square metres to cater to a local context. While there may be restaurateurs or developers who could increase profits with larger restaurants, Administration does not feel that increasing the size of small restaurants will help with the viability of a restaurant that is not competitive in the market. A complete answer would require a local analysis of the Calgary marketplace.

## **#2 -Investigating Regulatory Constraints**

Different uses have different rules contained within LUB 1P2007. These rules are used to mitigate impacts and address the individual needs of different uses. The different sizes of restaurants have different needs and impacts; therefore, different rules. A few of these rules have been analyzed below to see if amendments are required.

### **a. Separation Distances**

Currently, there are minimal regulatory constraints imposed on small, neighbourhood scale restaurants and they do not require a separation distance to residential uses. Rules however exist for restaurants over 75 square metres in order to mitigate impacts on surrounding areas.

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Rules regarding building interface and proximity to residential districts have been in the LUB since 1998. The LUB has rules for medium size restaurants, requiring that they be setback a distance of 45 metres from parcels designated either a low or multi-residential district. This is measured from the building containing the use to the nearest property line of the parcel designated as residential. This rule can be 'varied' or 'relaxed' by the Development Authority (DA), which means medium restaurants can be approved within 45 metres of a residential district when the DA decides it merits the relaxation. An approval is made on the basis of an evaluation of Council policy, the purpose of the district, community consultation and feedback. Through community engagement and site evaluation staff can determine if a relaxation of this rule is appropriate based on a variety of factors (sound planning, site design, feedback, complaints, building form, and proximity).

A separation distance rule is also contained in the commercial districts that include dwelling unit as a use to ensure that there is a buffer between restaurants over 75 square metres, as these have a larger potential to create disorder or nuisance from a residential environment. Restaurants over 75 square metres are listed, despite being close to residential, because they support a wider trade area, are located between multiple communities, typically are on a main road to attract a high volume of patrons (medium sized restaurants can see anywhere from 300-1000 patrons a night) and accommodate issues on the commercial street with minimal spill over into adjacent communities. As well there are interface and site design rules to address residential impacts. These rules include location of entrances, patron line-ups, noise from open doors and windows, patio locations, and hours of operation.

Administration researched development permit files from 1998 (when rules for residential separation and interface were first adopted) until present to investigate the effect of these rules. Administration could not identify a development permit that was refused solely based on a relaxation of the proximity to residential rule. From 1998 until present Administration has received 1, 471 development permits for restaurants. Specifically, from 1998 to 2008 (prior to the implementation of LUB 1P2007), 924 files for "restaurants" were received. From 2008 until present 547 development permits for small and medium restaurants were received. From this pool of 1, 471 development permits, only three per cent were refused.

An evaluation of these applications shows that the Development Authority has never refused an application based solely on proximity to residential districts. The Development Authority has only refused a restaurant use when a relaxation of proximity rules is taken into consideration in conjunction with parking relaxations, use area relaxations, policy considerations, community consultation and comments received from circulations. Typically the relaxations taken together were large enough that the Development Authority determined that the resulting impacts of the use were too great to grant a relaxation.

### **b. Parking Needs**

The LUB requires that a use provide a minimum number of parking stalls for that use. Some restaurants provide more than the minimum required parking stalls, while site conditions, or the owner/operators ability to or desire to pay for a larger site may present challenges in accommodating the parking stall requirement. When parking stalls are provided on site the costs and impacts of motor vehicle activity are managed by the developer or owner. When

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parking occurs off site the costs and impacts of motor vehicle activity are borne by the City, adjacent uses, and the neighbourhood. The LUB gives the Development Authority the ability to relax parking stall requirements when the development would not unduly interfere with the amenities of the neighbourhood or materially interfere with or affect the use, enjoyment or value of neighbouring properties.

The minimum parking requirements in the LUB were developed from a 2004 parking study conducted by Bunt and Associates. The minimum parking requirements for restaurants are less than the rates recommended by Bunt and Associates (by almost double) in order to encourage restaurants, particularly at a small scale, in a neighbourhood setting. The parking study concluded that smaller restaurants typically exhibit a lower parking demand because they are of a scale that attracts local consumers. To put this in to practice, the smallest neighbourhood commercial district (C-N1) has an even lower parking rate than the more auto-oriented community or regional commercial districts. Furthermore the pedestrian oriented corridor district (C-COR1) has a reduced parking rate to address existing site conditions and focus on a pedestrian oriented development.

Since the introduction of small restaurants (public area 75 square metres or less) in to the LUB on 2008 June 01, the Development Authority has received 330 development permit applications for a small restaurant. 300 of these files reached approval. Only three were refused. Reasons for refusal were based on relaxing parking requirements to a level that the Development Authority could not accept. Of these 300 approvals only 57 required a relaxation of parking requirements (20%).

Since the introduction of medium restaurants (public area under 300 square metres) in to the LUB on 2008 June 01, 217 development permit applications were received for a medium restaurant. 179 of these files reached approval. 11 of these files required a relaxation of a LUB rule (six per cent). Four of the 217 files were refused. Reasons for refusal were typically based on multiple factors including parking deficiencies and proximity to residential districts.

Parking is a main concern of residents and community associations. While local restaurants may cater to a local crowd, larger restaurants require larger amounts of customers that can't all be expected to arrive by foot from the local neighbourhood. Small restaurants already provide a substantial seating capacity that can be accommodated through local patrons. Increasing the size of small restaurants will only increase the amount of patrons that arrive by private vehicle. Knowing that parking in residential areas for surrounding commercial uses is already a concern for communities, and knowing that the current parking requirements are often less than the required amount to accommodate all patrons (based on previous parking study and current observation through site visits), Administration believes that the current requirements are appropriate for all sizes of restaurants. An increase to the size of small restaurants would result in an increase to the necessary required parking.

### **c. Permitted vs. Discretionary Uses**

The LUB contains both permitted and discretionary uses. The rationale behind this approach is that some uses (permitted uses) are always deemed appropriate whereas other uses (discretionary uses) may or may not be appropriate in their respective districts given the

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particular context. Permitted uses cannot be refused if they meet the rules. A discretionary use can be refused on the appropriateness of the use, regardless of the rules of the LUB. When deciding on a development for a discretionary use the Development Authority must consider relevant policies, purpose statements of the district and compatibility and impact of the proposed development. Discretionary use applications also provide the ability for the Development Authority to relax rules of the bylaw such as parking and proximity to residential districts.

Discretionary use applications also provide the Development Authority the opportunity to receive comments from various City of Calgary departments as well as councillor offices and community associations. This allows Administration to get a complete picture of the context of the specific site as well as the surrounding area. Finally, discretionary uses allow the Development Authority the ability to manage the site and building design and other technical issues, such as traffic, transportation, bicycle parking, waste and recycling.

Moving a use from a discretionary use to a permitted use implies the use is always appropriate in all contexts, and means that the City cannot manage issues such as clustering, social disorder, traffic, parking, waste and recycling, community consultation, vehicle and pedestrian access, façade appearance, and landscaping on a case by case basis. However, it provides certainty in terms of approvals.

Currently, there are some types of small restaurants, which are permitted in some land use districts because they are seen as appropriate in that context and an amenity that is desired. Increasing the size of permitted small restaurants would mean that there is the potential for more impacts that cannot be mitigated through conditions and this could be concerning for communities, particularly as there is not an opportunity for comment on their appropriateness in permitted use situations. The discretionary process allows community associations, councillor offices, Calgary Police Service, and the community members themselves to provide input as part of Administration's decision making process.

### **Conclusion**

In conclusion, based on factors analyzed above, Administration has determined that increasing the size of small restaurants is not needed to ensure that neighbourhood sized, small restaurants are developed within complete communities. There are only two commercial districts in which larger restaurants are not allowed. Furthermore, the rules for restaurants support the creation of restaurants but ensure that they are not at the detriment to the surrounding area.

The rules associated with restaurants bigger than 75 square metres are used to mitigate potential impacts on surrounding communities. Without them, communities are at risk for increased nuisance behaviour and a change to the atmosphere of the community. The data shows that extremely few permits are refused, and that those refusals are based on the fact that the use would cause undue impacts on the surrounding community whether through nuisance, parking or other concerns. It is for these reasons that Administration feels that increasing the size of small restaurants is inappropriate as larger restaurants bring more issues that could require mitigation.

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Essentially, Administration feels that the current rules provide a balanced approach to addressing business needs, community vibrancy and community concerns. The current approach incentivizes small restaurants in local districts, while allowing larger restaurants in most situations. For these reasons, Administration recommends no amendments as the current requirements meet the needs for the majority of stakeholders in a balanced, multi-faceted approach.

### **Stakeholder Engagement, Research and Communication**

Individuals who were involved in the creation of the Notice of Motion, along with the Urban Planner from the Federation of Calgary Communities and the Alberta lobbyist from the Canadian Restaurant and Foodservices Association were engaged in a general way in order to have a better understanding of the situation along with a better understanding of community views on this topic. However, as no new stakeholder engagement is allowed between Nomination Day (2013 September 23) and Organizational Day (2013 November 04), no formal public engagement was performed for inclusion in this report.

### **Strategic Alignment**

The policies of the MDP guide growth and change across the city as a whole and speak to the kind of city Calgarians want for the future. These policies provide relevance and direction across many scales of planning in the hopes to create degrees of direction to create prosperous and viable neighbourhoods, communities, and the city-at-large.

Having restaurants at varying scales and intensities help to implement the following local, community level and regional level policies in the Municipal Development Plan:

- Section 2.2 – Support the development of complete communities....that support transit viability, local commercial and other services.
- Section 2.2 – Neighbourhood stores, services and public facilities that meet day-to-day needs, within walking distance for most residents.
- Section 3.3 – Neighbourhood Activity Centres are appropriate sites to accommodate moderate intensification over time, with uses and development scales appropriate to the local context and community needs.
- Section 3.3.3 – Community Activity Centres should continue to provide a significant level of retail service
- Section 3.3.4 – Auto-oriented uses and designs that generate high volumes of traffic, consume large amounts of land in a low density form, require extensive surface parking, and create negative impacts for pedestrian travel and access should be discouraged

### **Social, Environmental, Economic (External)**

#### **Social**

Restaurants form an important part of a community as both an urban amenity and commercial enterprise. Living in a city of over 1 million people requires a diversity of amenities, scale and sizes. Commercial parcels add vitality, create complete communities and add economic stability to the overall benefit of the city.

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### **Environmental**

Restaurants at different scales allow for a variety of customers and transportation options. Smaller restaurants embedded into neighbourhoods and communities allow for people to walk or quickly arrive by transit, thereby potentially reducing the number of vehicle trips.

### **Economic (External)**

Restaurants are a vital piece to a neighbourhood's economy and the overall economy of the city. Ensuring the accommodation of a variety of scales, classes and intensities will allow us to have a diverse economy.

### **Financial Capacity**

This report has no impact on either current or future Operating and Capital Budgets.

### **Risk Assessment**

There are a number of risks to changing the way restaurants are managed; particularly in relation to increasing the maximum size and amending the rules. Changing the restaurant sizes and associated rules could result in increased community uncertainty as to the size and proximity of restaurant they can expect in an area, clustering and community interface issues. Increasing the size might also put small, local restaurants at risk of not being able to locate in neighbourhoods as bigger spaces will increase rents which small local businesses may no longer be able to afford. There is also a risk that larger size restaurants will not compliment the intention of our commercial, residential and industrial districts where only small restaurants are currently allowed.

### **REASON(S) FOR RECOMMENDATION(S):**

The current method of regulation allows the Development Authority to work with communities and applicants to successfully approve the vast majority of development permit applications for restaurants and to only refuse those deemed to have a significant negative impact on nearby residential uses. A historical review of development permits shows that the current size limitations and rules promote achieving the goals of the MDP by encouraging uses which support the intention and purpose of our commercial, residential and industrial areas while balancing the need to ensure community vibrancy and the importance of mitigating negative impacts on surrounding areas.

### **ATTACHMENT(S)**

1. Restaurant History
2. District and Use Matrix
3. Comparison of Canadian Municipalities Land Use Bylaw