

Ossington Avenue – Restaurant Study – Final Report

Date:	October 29, 2009
To:	Toronto and East York Community Council
From:	Director, Community Planning, Toronto and East York District
Wards:	Ward 19 – Trinity-Spadina
Reference Number:	09 138900 STE 19 TM

SUMMARY

This City-initiated amendment is subject to the new provisions of the Planning Act and the City of Toronto Act, 2006.

The proposal is to amend the Zoning By-law with respect to implementing additional restrictions on restaurants and related uses on Ossington Avenue, between Queen Street West and Dundas Street West (the study area) in Ward 19.

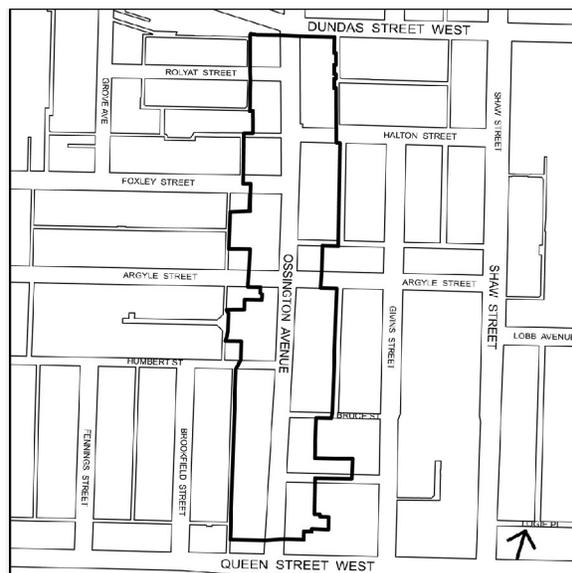
Staff are recommending a number of amendments to the Zoning By-law which seek to balance the concerns of the residents and the business/property owners. The cumulative effects of the amendments aim to limit the overall impacts of restaurants and related uses on the adjacent residential area, while still allowing opportunities for new restaurants and related uses to open.

This report reviews and recommends approval of amendments to the Zoning By-law.

RECOMMENDATIONS

The City Planning Division recommends that:

1. City Council amend Zoning By-law 438-86, as amended, substantially in



- accordance with the draft Zoning By-law Amendment attached as Attachment No. 2.
2. City Council authorize the City Solicitor to make such stylistic and technical changes to the draft Zoning By-law Amendment as may be required.
 3. City Council direct the Chief Planner and Executive Director, City Planning Division, through the Zoning By-law Project, to report to Planning and Growth Management Committee on consideration of amendments to the City-wide By-law regarding restrictions to rear yard and flanking patios.

Financial Impact

The recommendations in this report have no financial impact.

ISSUE BACKGROUND

In 2004 City Council directed Planning staff to undertake a planning analysis of Ossington Avenue between Queen Street West and Dundas Street and a small portion of the north side of Queen Street West. The study identified that the subject portion of Ossington Avenue was an area in transition from a street that was once primarily industrial to one that is more commercial and residential in nature.

The analysis identified two types of land use conflicts emerging as a result of this transition. The first conflict revolved around the remaining industrial operations using Ossington Avenue for loading and unloading of raw materials and goods, which posed safety concerns to the increasing number of pedestrians using the street. The second conflict stemmed from the introduction of restaurants to the street which had an entertainment function. These 'restaurants', mainly karaoke bars and late night drinking establishments, were generating community concerns with respect to noise, vandalism, disruptive behaviour, late night activity and parking congestion.

Since 2004, the transition of Ossington Avenue has continued, with most of the remaining industrial uses relocating out of the area and a new influx of restaurants, many of which operate more like a bar, moving in. As a result, land use conflicts between the restaurants and adjacent commercial and residential properties have continued and become more frequent.

On May 25, 2009, City Planning Staff, put forward a report to City Council to recommend that a restaurant study be conducted for Ossington Avenue between Queen Street West and Dundas Street West to better understand the relationship between the commercial strip and the adjacent residential properties. Given the development pressures generated by restaurants and the growing popularity of Ossington Avenue as a regional draw, staff determined there was merit in reviewing the collective impact of restaurants and similar uses on the area. The study was to review:

- the precise type of conflicts and their source;
- whether current zoning provisions are sufficient to address these conflicts;

- whether the applicable zoning by-law should be amended to address these conflicts; and
- new enforcement strategies.

City Council adopted staffs recommendation at its May 25 and 26, 2009 meeting and also enacted an interim control by-law to prohibit restaurants and similar uses for a period of one year within the study area to allow City Planning sufficient time to conduct a study of the street.

Study Area Context

Ossington Avenue is a significant arterial road that begins at Queen Street West and terminates at Davenport Road. The portion of Ossington Avenue between Queen Street West and Dundas Street West, as shown on Attachment “1” to this report (the “Study Area”), is similar to a traditional Main Street with a mix of residential, commercial and retail uses, including restaurants. To the east and west of Ossington Avenue are typical low density residential neighbourhoods.

A total of 128 properties are located within the Study Area. Of these 128 properties, approximately one fifth (27) have one or more restaurant or restaurant related establishments operating on site. There are a total of 28 establishments within the Study Area, 21 of which are liquor licensed, representing a total liquor license capacity of over 1500 people.

Official Plan

The City of Toronto Official Plan designates the stretch of Ossington Avenue between Queen Street West and Dundas Street West as *Mixed Use Areas*, which provides for a broad range of commercial, residential and institutional uses subject to a number of development criteria.

The areas adjacent to Ossington Avenue to the east and west are designated as *Neighbourhoods* in the Official Plan. *Neighbourhoods* are considered physically stable areas made up of residential uses in lower scale buildings.

Zoning

Under former City of Toronto Zoning By-law 438-86 the portion of Ossington Avenue between Queen Street West and Rolyat Street (just south of Dundas Street) is zoned CR T2.5 C2.0 R1.5. The CR zoning classification permits a mix of commercial and residential uses up to a total density of 2.5 times the area of any lot, of which a maximum of 2.0 times the area of a lot is permitted to be commercial and 1.5 times the area of a lot residential. An *entertainment facility* (nightclub) is not a permitted use in this area. The maximum permitted height for this portion of Ossington Avenue is 14.0 metres.

The small portion of Ossington Avenue between Rolyat Street and Dundas Street West is designated MCR T2.5 C1.0 R2.0, which permits a total density of 2.5 times the area of any lot, of which a maximum of 1.0 times the area of a lot is permitted to be commercial

and 2.0 times the area of a lot residential. The maximum permitted height for this portion of Ossington Avenue is 16.0 metres.

The neighbourhoods to the east and west of Ossington Avenue are zoned R4 Z1.0 which permits a wide range of residential uses up to a total density of 1.0 times the area of a lot, with a maximum height of 10.0 metres.

Community Consultation

A Community Consultation Meeting was held on May 28, 2009 at St. Christopher House to notify residents and property owners of the interim control by-law passed by Council on May 26 and 27, 2009 and to provide the community an opportunity to ask questions and provide feedback to help guide the restaurant study to be conducted by City staff. Approximately 175 people attended. Following presentations from the local Councillor and City staff a number of issues were discussed, including:

- Noise from inside the restaurants/bars and from patios as a major concern;
- Noise from a large number of people emptying out on to the streets late at night;
- Associated drug use, vandalism, violence and general disruptive behaviour caused by the large number of intoxicated patrons that frequent the area late in the evenings, especially on the weekends;
- Lack of on-street parking on the surrounding residential streets due to the large number of patrons driving to the area;
- Ineffective response by the City when complaints are called in about noise, drug use, disruptive behaviour etc.;
- A number of residents and restaurant/property owners expressed fears that rumours are circulating about some of the Entertainment District establishments looking to relocate within the Study Area;
- A greater diversity of businesses (e.g. grocery stores, dry cleaners etc.) is desired for this area;
- Lack of communication provided to business owners with respect to complaints levied against them prevents them from figuring out how to modify their individual operations in an effort to prevent future problems; and
- The City should allow the market to dictate the types of uses appropriate for the Study Area; problems should be solved through better enforcement and harsher penalties for inappropriate operators.

On October 15, 2009 a second Community Consultation Meeting was held to present to the community the findings of the restaurant study conducted by staff and outline the recommendations to the Zoning By-law proposed by staff. Approximately 70-80 people were in attendance. Again, following presentations made by the Councillor and City staff, the community was given a chance to ask questions and respond to staff's recommendations. While responses varied, in general:

- Attending residents seemed to be supportive of the proposed changes to the zoning by-law, with some wondering whether there was an opportunity to put a cap on the number of restaurants permitted in the Study Area. Parking remained a concern that some felt needed to be addressed.

- There were a number of business and property owners in attendance who did express concern that certain preliminary recommendations would impact the success of their businesses/properties and the commercial viability of Ossington Avenue itself, especially those recommendations restricting patios and entertainment uses.

Agency Involvement

The Ossington Avenue restaurant study was conducted by City Planning staff in consultation with Municipal Licensing and Standards (MLS), Toronto Building and the local councillor.

While the results of this review should aid in addressing some of the conflicts that exist between businesses in the Study Area and the adjacent residential neighbourhoods, it is recognized that enforcement and zoning/licence compliance issues will need to be addressed to solve a number of the conflicts that currently, and will continue, to exist. City Planning, Municipal Licensing and Standards, Toronto Building and Toronto Police Services will continue to play a significant role beyond the conclusion of this study to ensure appropriate efforts are made through enforcement.

COMMENTS

Staff are recommending a number of amendments to the Zoning By-law which seek to balance the concerns of the residents and the business/property owners. The cumulative effects of the amendments aim to limit the overall impacts of restaurants and related uses on the residential area, while still allowing opportunities for new restaurants and related uses to open.

Size of Establishments

Larger restaurants pose two basic problems. The first is that larger establishments typically generate higher levels of noise, garbage, disruptive social behaviour by patrons and parking demand, given that they seat and attract larger crowds. The second is that larger restaurants tend to attract people on a more regional basis. The proliferation of establishments which cater to a regional market threatens to change the character of the street from a local shopping strip to a regional entertainment destination.

While a transition has generally been occurring within the Study Area over the past ten years, only in the last three years has the subject portion of Ossington Avenue really begun to establish itself as a restaurant/bar destination. Of the 28 establishments that currently exist within the Study Area, 15 of them began operating in the past three years. While most of the establishments within the Study Area would not be classified as larger restaurants, the proliferation of these restaurants on the street, their tendency to function as bars rather than restaurants, and Ossington's close proximity to the larger establishments on Queen Street West has established Ossington Avenue as a regional destination.

As the Study Area continues to attract new restaurant uses, a number of clubs and bar operators are said to be considering relocating out of the traditional entertainment districts downtown and into the Study Area. Given the number of large lots and buildings that exist within the Study Area due to the streets legacy as an industrial strip, the attraction of Ossington Avenue for larger establishments is real. The implementation of a size restriction for any future restaurant should help mitigate the problems facing the street and adjacent neighbourhoods.

Current By-law restrictions limit any restaurant to a size of 400m² as the properties along Ossington all exist within 6.1m of a residential zone. Understanding that most of the existing restaurants generating conflicts are well below 400m², any future restaurant opening within the Study Area approaching a gross floor area of 400m² would exacerbate the current problems. An influx of restaurants larger than those that currently exist within the Study Area would also serve to strengthen Ossington as a regional draw rather than a local retail strip.

In an effort to control and balance growth and minimize the impact of future establishments within the Study Area and adjacent residential areas, staff recommend that a size restriction of 175 square metres of non residential gross floor area be applied to restaurants, take-out restaurants, bake shops, places of assembly, places of amusement and clubs in the CR district along Ossington Avenue between Queen Street West and Dundas Street West.

The rationale for the 175m² was determined through a review of the lot sizes and ground floor areas of all 126 properties within the Study Area, as well as the existing 28 establishments. The study revealed that:

- Of the 28 existing establishments within the Study Area, only five exceed a floor area of 175m². The recommended size restriction, when evaluated against the existing restaurants, would not have prohibited the majority of establishments from opening and operating at their current size. As such, the recommendation should also not detract from future desirability or success of Ossington Avenue as a commercial avenue.
- The average gross floor area of the existing establishments within the Study Area is 128m². A floor area capped at 175m² would still allow for ground floor expansion for a number of the establishments currently in operation.
- The average ground floor area for all of the existing buildings within the Study Area is 165m². These buildings have ground floor areas ranging from 37m² to 1341m². A floor area limitation of 175m² would impact 25 buildings on Ossington from developing their entire existing ground floor area for a restaurant or related use.
- The Study Area's draw as a regional destination for restaurants/bars and the existence of a number of large properties and buildings on the street has generated

interest for the types of establishments more appropriate for the Entertainment District. A size restriction of 175m² would serve to prevent larger operators from locating within the Study Area, thereby limiting the ability of the Study Area to act as a regional attraction.

For those establishments that exceed 175m², they will be deemed legal non-conforming with respect to their size, and can continue as such even through ownership change. If the existing uses are discontinued, then the legal non-conforming protection will cease and the recommended by-law will apply in full. The 175m² is to include all useable space, including the kitchen, with only bathrooms, storage and mechanical spaces exempt from the calculation.

Accessory Entertainment Uses

While the opportunity exists for any restaurant to disrupt a residential neighbourhood given the unpredictable nature of individual patrons, our review concluded, that for the purpose of the Study Area, it is not necessarily the restaurant use that is incompatible with the adjacent residential neighbourhoods but the type of establishments and how they are operated. The source of a majority of the residents' complaints, specifically noise, vandalism and drunken disruptive behaviour, revolves around a number of establishments that operate more like a bar or late night drinking establishment where entertainment and alcohol service act as the primary activities rather than the service of food.

By-law 438-86 defines a restaurant as a "building or a portion of a building used for the preparation and cooking of meals and the sale of food and beverages to the public while they are seated, for consumption on the premises" and permits a number of accessory uses. Given the broad definition, the defined term 'restaurant' applies to both a traditional eating establishment and one that operates more like a bar. While providing a new defined term for 'bar' or 'tavern' could help identify those specific uses that should be prohibited, it does not help to address a hybrid type of establishment that operates as a dining restaurant during certain hours and as a bar in the evenings and late at night; which appropriately characterizes the operation of the majority of establishments within the Study Area. For these reasons, our study determined that, to prevent the type of establishments that cause disruption, it will be more useful to limit the types of accessory uses permitted within these establishments than to define new uses for the purposes of prohibiting them on Ossington Avenue.

The definition of *restaurant* in Zoning By-law 438-86 provides for a number of accessory uses so long as they are limited to 6% (or 47m², whichever is larger) of the establishments gross floor area (for restaurants greater than 350m² in size). For a restaurant size of 350m² or smaller a maximum area of 21m² can be used for a dance floor, stage, disc jockey and any other entertainment area, amongst other uses. The as-of-right permission for these types of uses within a restaurant provides an opportunity for an establishment to cater to a crowd in which entertainment and alcohol service are the primary activities rather than food service. It is therefore recommended that dance floors and disc jockeys be prohibited from any future establishment within the Study Area and

that any other accessory use, as identified in the definition of *restaurant* in By-law 438-86, be limited to a maximum gross floor area of 11m² (6% of 175m²).

Patios

The general Zoning By-law prohibits any patio in the rear yard or on a rooftop of a building within an MCR zone if the lot is located within 10 metres of a lot in an 'R' (residential) zone. The intent of the 10 metre separation distance provision is to minimize possible noise, overlook, privacy, cigarette smoke and lighting impacts of outdoor patios on nearby residential properties. While the majority of the properties within the Study Area are located closer than 10 metres to the adjacent residential zone, most of the existing patios themselves are separated by approximately 10 metres from the abutting residential properties.

Of the 9 patios located in the study area, 5 are at the rear and 4 are on the flanking street boulevard. The City has received a number of noise complaints related to patios in the area, including people talking loudly, yelling, and loud music being played on the patio. Residents confirmed these as issues during the community meeting consultation sessions. Even where mitigative measures, such as fences or high walls have been installed at the rear of the lot or patio, noise can still travel further than 10 metres, and is reportedly most noticeable at night.

While the City's Noise By-law can be used to address loud music on the patio, the By-law cannot regulate or address noise generated by patrons using the space. Staff do not believe that the 10 metre separation distance limitation is sufficient enough restriction and it is recommended that the Zoning By-law be amended to prohibit any new rear yard and rooftop patios in the study area, without exception. Staff are also recommending that any future patio flanking a residential street be restricted to 50% of the depth of the building in which a restaurant is located (measured from the front wall) to restrict the level of noise that travels down the residential streets. Patios may also be permitted within the City Boulevard where a boulevard café license application is applied for, which is subject to a poll of the neighbourhood and an 11:00 p.m. closing time.

All legally permitted patios existing within the Study Area on the date that the proposed by-law is enacted will be deemed legal non-conforming uses and will be subject to the limitations set out in the Planning Act, in this respect. Where patios have been permitted on a temporary basis, upon the expiry of the existing permission, the patio use will no longer be permitted and these patios will not benefit from legal non-conforming status.

Based on the results of this study and that the number of problems associated with rear yard and flanking patios when adjacent to a residential zone are not specific to Ossington Avenue, staff are recommending that rear yard and flanking patios be reviewed on a City wide basis to determine if amendments should be made to the new draft by-law.

Windows and Doors on Rear and Flanking Walls

There have been a number of complaints received and concerns raised about noise projecting from the inside of restaurants that can be heard throughout the residential

neighbourhood. When windows and doors are opened during the summer months, music and patron noise is considerably increased. The draft Zoning By-law amendment recommends a maximum combined area for all operable doors and windows on rear and flanking walls of 4.0m². This amendment is intended to prevent large windows and doors being located on a wall of a restaurant (or related use) facing a flanking residential street or a rear lot line that abuts a residential zone so as to limit the level of sound transmission beyond the walls of any future establishment

Number and Location of Establishments within a Building

While the Zoning By-law currently restricts any restaurant related use to 400m² when adjacent to a residential zone, it does not prohibit the number of restaurants within a building or on which floor of a building they can operate. This means that more than one restaurant can operate out of one building and any establishment can be located on any storey within a building.

The complaints that have been received regarding noise projecting from inside a restaurant are considerably higher for those establishments that are located on the second floor of buildings. Even if there is no patio associated with the establishment, the noise that escapes through any open windows or doors on a second floor causes a significant disruption to the adjacent properties, especially at night.

The ability to operate multiple restaurants within one building provides for the opportunity for two or more smaller establishments to function as one larger establishment and it is difficult to prevent and enforce connections between the multiple operations. As such, any size restriction could be rendered useless if there is no control over the number, location and size of establishments within one building.

Staff are therefore recommending that for the Study Area, any future restaurant or related use be limited to the ground floor only, and that the 175m² size restriction be applied to a single establishment or a combination of more than one establishment within a building.

Parking

This report does not recommend the introduction of a new parking requirement for the area or any changes to the City's existing parking requirement. The Study Area is well served by public transit and has public parking facilities located on Ossington Avenue just north of Queen Street West as well as on Dundas Street West just east of Ossington Avenue.

Like most of the rest of the City, the Zoning By-law currently does not require parking to be provided for restaurants in the Study Area. Most of the establishments within the Study Area do not and are not physically able to provide parking on-site due to the narrow widths of the properties and insufficient space located at the rear of most buildings off the laneway.

While the City may accept cash payments from owners or occupants of buildings in lieu of the provision of parking spaces if they were required, these payments are not

earmarked for use in the area where they are collected and would not necessarily add to parking opportunities for the Study Area.

The problems result primarily from illegal parking by patrons on adjacent residential streets and from competition for legal parking spaces on streets adjacent to the retail strip by commercial customers and area residents. Staff recommend that it would be more appropriate to address the problems experienced by area residents through a review of the parking permit or parking enforcement process rather than to require parking on site for any new restaurant located in the Study Area.

Conclusion

Ossington Avenue, between Queen Street West and Dundas Street West, has emerged and continues to grow as a popular draw for restaurants and similar uses. This has resulted in land use conflicts with the adjacent residential area and other business owners. Staff are of the opinion that the proposed recommendations should balance the concerns of both the residents and business/property owners. The cumulative effects of the amendments aim to limit the overall impacts of restaurants and related uses on the adjacent residential area, while still allowing opportunities for a balanced growth of new restaurants within the Study Area.

These initiatives alone will not solve the problems experienced by this neighbourhood; however, they should contribute to a solution. There still is and will be a reliance on a number of supporting City divisions to ensure that the relationship between Ossington Avenue and the adjacent residential neighbourhood improves and stabilizes.

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SIGNATURE

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ATTACHMENTS

Attachment 1: Study Area Map
Attachment 2: Draft Zoning By-law Amendment

Attachment 1: Study Area Map



Study Area - Ossington Avenue between Queen Street West and Dundas Street West

File # 09_138900

Existing Restaurants and Related Uses



Not to Scale
10/21/2009

Attachment 2: Draft Zoning By-law Amendment

Authority: Toronto and East York Community Council Item ~ as adopted by City of
Toronto Council on ~, 20~
Enacted by Council: ~, 20~

CITY OF TORONTO

Bill No. ~

BY-LAW No. ~-2009

To amend the General Zoning By-law No. 438-86 of the former City of Toronto for those lands along Ossington Avenue between Queen Street West and Dundas Street West

WHEREAS authority is given to Council by Section 34 of the *Planning Act*, R.S.O. 1990, c.P. 13, as amended, to pass this By-law; and

WHEREAS Council of the City of Toronto has provided adequate information to the public and has held at least one public meeting in accordance with the *Planning Act*;

The Council of the City of Toronto HEREBY ENACTS as follows:

1. The text of Section 12(2) of By-law No. 438-86, as amended, is further amended by adding the following restriction:

“ _____. No person shall, within the area shown within the heavy lines on the map at the end of this exception,

- (1) use land or erect or use a building, addition, or structure for the purpose of a *bake-shop, club, place of amusement, place of assembly, restaurant, take-out restaurant* or *patio* provided in connection therewith unless:
 - (a) the *front lot line* or *side lot line* of such *lot* is on Ossington Avenue;
 - (b) any such use is wholly contained within the walls of the building or structure housing the principal use, except for a *patio*, subject to Section (1)(d) and (e) of this By-law;
 - (c) the aggregate area of all operable windows and doors located in any ground floor wall facing the *rear lot line* or street other than Ossington Avenue shall not be greater than 4.0 square metres;

- (d) any such use located at or above *grade* is limited to the ground floor only;
- (e) the *patio*, if any, is located,
 - (i) between the *front wall* of the building or structure housing the principal use and the *front lot line* of the *lot*, provided the *front lot line* of such *lot* is on Ossington Avenue, or
 - (ii) between the wall facing the *side lot line* of the building or structure housing the principal use and the *side lot line* of the *lot*, to a maximum of 50 per cent of the depth of the building or structure housing the principal use, measured from the *front wall*; and
- (2) erect or use any building or structure for the purpose of a *restaurant, take-out restaurant, bake-shop, place of amusement, place of assembly* or *club*, unless the total *non-residential gross floor area* used for any one or combination of said uses in a building or structure does not exceed 175 square metres.

For the purposes of this exception, any italicized term contained within this exception shall have the same meaning as defined in By-law No. 438-86, except that:

- (a) the term *restaurant* as defined in Section 2(1) of the By-law, shall be deemed not to include subsection (v), with subsection (iv) to be read as:
 - (iv) floor area up to 11 square metres to be used for one or more of the purposes of a:
 - stage
 - teletheatre gambling
 - sound room
 - not more than two pinball or other mechanical electronic game machines, none of which machines to be used for the purpose of gambling
 - an area dedicated to recreational activities, but not a dance floor or disc jockey
 - any other entertainment area, but not a dance floor or disc jockey

and no exterior area may be used for those purposes; and

- (b) the *non-residential gross floor area* of a restaurant, take-out restaurant, bakeshop, place of amusement, place of assembly or club shall mean the aggregate of the areas of each floor and the spaces occupied by walls and stairs, measured above and below *grade*, measured between the exterior faces of the exterior walls of the building or structure at the level of each floor, exclusive of only a room or enclosed area that is used exclusively for heating, cooling, ventilating, electrical, mechanical (other than escalators) or telecommunications equipment that services the building, storage or washrooms.”

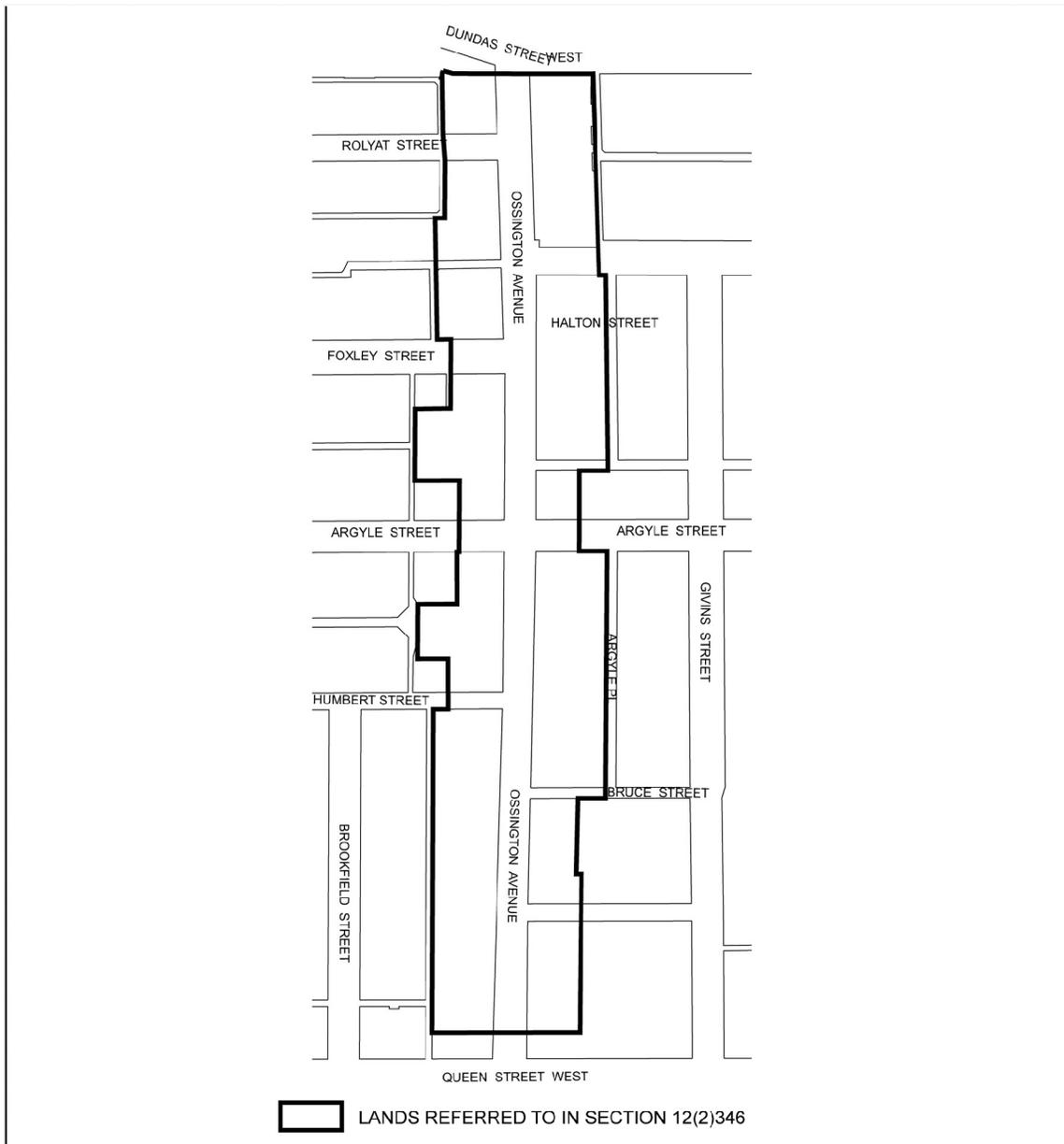
2. By-law No. 547-2009 being “A By-law to effect interim control on those lands on Ossington Avenue between Queen Street West and Dundas Street West” is hereby repealed upon the coming into force of this by-law.

ENACTED AND PASSED this ~ day of ~, A.D. 2009.

DAVID R. MILLER,
Mayor

ULLI S. WATKISS,
City Clerk

(Corporate Seal)



Ossington Avenue between Queen Street and Dundas Street

File # 09_138900



Not to Scale
10/28/2009