

**Council Meeting Number 2019-05**  
**Addendum**  
**Tuesday, January 22, 2019**

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The consent of Council is requested for the **addition** of Delegation 1.

1. David Kerr, Chair of the Board of the Tett Centre for Creativity and Learning, will appear before Council to speak to Information Report 7 with respect to the Juniper Café – Lease Update.

The consent of Council is requested for the **addition** of Information Report 7.

**7. Juniper Café Lease Update**

The purpose of this report is to update Council with the status of the Lease with Juniper Café at the Tett Centre for Creativity and Learning.

(The Report of the Commissioner of Community Services (19-046) is attached to the addendum as schedule Pages 1-9)

The consent of Council is requested for the **addition** of Miscellaneous Business Item 4.

**Miscellaneous Business**

4. **That** notwithstanding Section 3.1.3, subsection (iii) of the Flag Display Policy, Council approve the raising of the Bell Let's Talk flag on January 30, 2019 in Confederation Park, as requested by Sandy McDonald, Regional Director of Community Affairs, Bell.  
**(See Communication Number 05-077)**

The consent of Council is requested for the **addition** of the following Communication:

**Referred to all Members of Council**

- 05-077 Correspondence from Sandy McDonald, Regional Director of Community Affairs, Bell, requesting that City Council approve the raising of the Bell Let's Talk flag on January 30, 2019 in Confederation Park.

(Distributed to all members of Council on January 18, 2019)

(File Number CSU-M10-000-2019)



**City of Kingston  
Information Report to Council  
Report Number 19-046**

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**To:** Mayor and Members of Council  
**From:** Lanie Hurdle, Commissioner, Community Services  
**Resource Staff:** Peter Huigenbos, Director, Real Estate & Environmental Initiatives  
**Date of Meeting:** January 22, 2019  
**Subject:** Juniper Café Lease Update

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**Executive Summary:**

The J.K. Tett Centre at 370 King Street West is owned by the City of Kingston and leased to the Tett Centre for Creativity and Learning (TCCL), a non-profit organization with a Board of Directors (the Tett Board) who act as the Facility Operator. The Tett Board is comprised of sixteen volunteer members representing tenants, the City, Queen's University and the broader Kingston community, and reports annually to the City. The most recent annual report to Council from the Tett Board can be found at the following link: [Report Number 18-205](#). The Tett Board administers sub-leases to all non-profit sub-tenants in the building who deliver arts programming. The Board also administers the sub-lease for the café space that operates as a privately run, for profit, café. The City, as Landlord, reviews and agrees to all sub-leases. The negotiation of sub-leases is the responsibility of the Tett Board and not that of the employees responsible for the day to day operations of the facility.

In August 2015, a sub-lease was signed between the TCCL and Epicurious Catering Inc. (ECI), with the understanding that ECI would open a food and beverage space subsequently operated as The Juniper Café. The initial sub-lease term ran from September 1, 2015 and July 31, 2017.

A sub-lease extension and amending agreement for an 18 month second term from August 1, 2017 to January 31, 2019 was signed by ECI in March 2018 through to January 31, 2019. There were no options to renew the lease extension beyond January 31, 2019.

ECI, owners of The Juniper Cafe, told the Tett Board in August 2018 that they no longer wished to operate the café and were seeking a purchaser. ECI and the Tett Board attempted to negotiate to extend the current lease and sign a new lease with a new owner. Ultimately, ECI did not agree to the 3 month extension offered by the Tett Board and were not able to provide

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information about a purchaser and an agreement to sell to a purchaser. By November, the Tett Board decided to initiate a Request for Proposals (RFP) process to fill the café space as they faced the prospect of having no café service at the Tett. The Tett Board expressed to ECI that they would consider putting the RFP process on hold if ECI could come forward with a qualified purchaser.

In January 2019, a new potential buyer of the café came forward and it was at this point the Tett Board indicated it was too late in the process for a new potential respondent to the RFP. A few days later, Council received an email from the current owners of the Juniper Café presenting their view of the situation, and it appears similar information was shared by the owners to a wide variety of individuals and has also been shared on various social media platforms gathering significant public and media attention.

City staff attended a TCCL Board of Directors meeting on Friday January 18, 2019, and received direction from the Tett Board to re-start the process that was put forward by them in the fall of 2018. The process will be in alignment with the email request from the owner/operator of the Juniper Café (Exhibit A) and the previous approach taken by the Tett Board. City staff will lead the new lease negotiation process with any potential new owner of the Juniper Café as proposed by ECI.

**Recommendation:**

This report is for information purposes only.

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**Authorizing Signatures:**

ORIGINAL SIGNED BY COMMISSIONER

**Lanie Hurdle, Commissioner, Community Services**

ORIGINAL SIGNED BY CHIEF ADMINISTRATIVE OFFICER

**Gerard Hunt, Chief Administrative Officer**

**Consultation with the following Members of the Corporate Management Team:**

Jim Keech, President & CEO, Utilities Kingston	Not required
Desirée Kennedy, Chief Financial Officer & City Treasurer	Not required
Commissioner, Corporate & Emergency Services	Not required

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**Options/Discussion:**

The J.K. Tett Centre at 370 King Street West is owned by the City of Kingston and leased to the TCCL, a non-profit organization. The TCCL has a Board of Directors (the Tett Board) who act as the Facility Operator. The Tett Board is comprised of sixteen volunteer members representing tenants, the City, Queen's University and the broader Kingston community and reports annually to the City. The most recent annual report to Council from the Tett Board can be found at the following link: [Report Number 18-205](#). The Tett Board administers sub-leases to all non-profit sub-tenants in the building who deliver arts programming. The Tett Board also administers the sub-lease for the café space that operates as a privately run, for profit, café. The City, as Landlord, reviews and agrees to all sub-leases. The negotiation of sub-leases is the responsibility of the Tett Board and not that of the employees responsible for the day to day operations of the facility.

The operation of a café was not included as part of the original J.K. Tett Centre business plan approved by Council in 2010; however, the Tett Board identified a need to be able to generate revenue through different means to support the TCCL operations, while at the same time positioning the facility as a cultural hub that successfully integrates the arts, culture and heritage, and engages a diverse range of constituents.

By 2015, with the doors to the J.K. Tett Centre officially re-opened, the desire to include a café-style food service and on-site catering business had emerged as an added feature viewed to provide greater potential for programming by the Tett Board. This service was also viewed by the Tett Board as an important way to position the facility as a cultural hub that draws people together and supports a combination of creativity, learning and community building. With a potential new revenue stream, both direct and indirect, it would also increase the Tett Board's potential for revenue generation to fulfill its role as operator.

It was recognized; however, that such a venture was not without risk and the Tett Board indicated a willingness to take on that risk to ensure the facility becomes the kind of gathering place that was imagined from the beginning. In 2015, Council approved a recommendation to support the Tett Board with their proposal to lease space within the building for the operation of a café and on-site catering service.

**2015 Selection of Café Operator**

The Tett Board worked hard to find individuals/businesses with serious interest in signing up to be the first café operator, but the response was initially limited. This was understandable as the new Tett Centre for Creativity and Learning was in its infancy and the market for a private café business in this location was untested. Ultimately, ECI, owned by Amber Thom and Jamie Hodges, was selected with the intention that they would operate a food and beverage service within the space known as The Juniper Café.

**Lease with ECI / Juniper Café**

In August 2015, a lease was signed between the TCCL and ECI, with the understanding that ECI would open in the space as The Juniper Café. The first lease term ran between September

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1, 2015 and July 31, 2017, with an option to renew for a second term of three years, subject to negotiation of terms and rent. There were no other options for further terms.

Throughout the first term of the lease, several landlord/tenant issues arose. This was unfortunate, but perhaps to be expected, considering the TCCL was operating under a new programming model in a new space, with no parties having any previous experience operating a café at the Tett. City staff offered support to both the Tett Board and ECI to not only resolve the issues but to also assist in negotiating new terms and new rent for the 2<sup>nd</sup> term of the lease, as stipulated in the lease agreement. All parties agreed that key issues needed resolution prior to negotiating the terms of the 2<sup>nd</sup> term of the lease.

Some of the key issues involved: the calculation of additional rent that had not been invoiced and/or paid but was included in the lease; a need for improvements to the air conditioning in the space; the café's role in providing on-site catering to events and tenants of the TCCL; and whether separate fees/additional rent for garbage collection were valid.

A settlement on the additional rent owing was agreed to by the parties and there are no outstanding issues in this regard.

A supplementary air conditioning system has been installed in the facility and there are no outstanding issues in this regard.

On-site catering obligations of the café were clarified and agreed upon.

It was agreed that garbage collection was included as part of the rent paid by ECI and there are no outstanding invoices or issues in this regard.

With the resolution of these key issues, City staff assisted the Tett Board in extending the lease between TCCL and ECI for a 2<sup>nd</sup> term, subject to a new rent amount. The rent was re-negotiated based on the average of the opinions from two local commercial realtors, and ultimately, the rent was reduced from what was stipulated in the 1<sup>st</sup> term of the lease.

There was a lot of discussion by all parties regarding the length of the lease extension for the 2<sup>nd</sup> term, and the terms for future renewals, if any. Ultimately, agreement was reached on an 18 month term from August 1, 2017 to January 31, 2019. This lease extension and amending agreement was signed by ECI in March 2018. There were no options to renew the lease beyond January 31, 2019, but it included a condition that the Tett Board could offer a renewal to ECI at its discretion.

### **Proposal from ECI to Sell the Juniper Café and Extend Lease**

In August 2018, the owners notified the Tett Board in person and in writing that they no longer wished to own and operate the café, and were seeking a purchaser to buy the Juniper Café and take over the lease with the intent that a further lease extension be negotiated with the new owner. At that time, the current lease had less than 6 months remaining until its end date of January 31, 2019, and included no renewal options. Initially there was uncertainty on how to move forward with a process to facilitate ECI's request to sell and negotiate a new lease with a

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new owner. ECI requested a short term extension of 3-6 months to the lease in order to provide some time to facilitate the process.

Upon initial review in September 2018, the Tett Board decided that, because the current operators no longer wished to own and operate the Juniper Café and the lease was coming to a scheduled end in January 2019, it should follow a fully-open, public Request for Proposals (RFP) process to identify and secure a café operator that would meet both the high standard that ECI has set, and also meet the needs of the Tett Centre.

Later in September, representatives of the Tett Board met with ECI and their potential purchaser to discuss a lease extension and sale of the Juniper Café. After some back and forth discussions and correspondence, the Tett Board agreed to delay its plans to release an RFP in order to negotiate a lease extension with the potential new purchaser of the Juniper Café. The Board also offered ECI a 3 month extension to extend the current lease to April 30, 2019 in response to their request to provide some additional time to negotiate the sale of their business.

ECI agreed in principle to the Tett Board's offer. However, within a few days, ECI informed the Board that it would decline the Tett Board's offer and continue to seek a buyer.

In early November, the Tett Board followed up with ECI stating that in light of them declining the proposal to extend the lease, the Tett Board would move ahead with starting the RFP process by way of releasing an Expression of Interest (EOI). However, the Tett Board indicated that if ECI could bring forward a qualified purchaser during that time, they could elect to not proceed past the EOI stage to the more formal RFP stage. In addition, the Tett Board continued to extend its offer of a 3 month lease extension to extend the lease to April 30, 2019.

ECI responded that it had found a potential purchaser and presented a new proposal. The new proposal requested that at the conclusion of the current lease, the original lease from 2015-2017 be reinstated and continue until July 31, 2020. In addition, the Tett Board would need to agree to negotiate a new lease with the purchaser as well. This proposal was a significant step in a different direction than the discussions that had taken place to that point. The Tett Board was not in position to accept this and reiterated it was open to a 3 month extension and to negotiate a new lease with a new owner.

The Tett Board left their offer on the table throughout November. In late November, ECI indicated a purchase and sale agreement was in the works and that the Tett Board should expect to hear from the purchaser's lawyer. After about two weeks, there had been no contact from a lawyer representing a purchaser. Unfortunately, with less than 2 months to go in the current lease with ECI, and with no agreement to the 3 month extension that had now been offered to ECI for a number of weeks, the Tett Board decided it needed to move on with releasing the RFP.

The RFP was released in early January to the two qualifying respondents identified through the EOI process. The Tett Board also provided the RFP to the original potential purchaser of the Juniper Café who asked to be included in the RFP, despite not responding to the EOI. Because of the discussions and attempts with ECI and this purchaser to reach a deal throughout October

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and November, the Tett Board agreed to open the RFP to this individual and provided the RFP documents. Shortly after registering a formal intent to submit a proposal, the individual withdrew from the process, indicating they would not be submitting a proposal after all.

Shortly after this, another potential new buyer of the café came forward and it was at this point the Tett Board indicated it was too late in the process for a new potential respondent to the RFP. A few days later, Council received an email from the current owners of the Juniper Café presenting their view of the situation, and it appears similar information was shared by the owners to a wide variety of individuals and has been shared on various social media platforms, gathering significant public and media attention.

City staff also received a request from the Juniper Café owners via email (Exhibit A), which is quite similar to the process that the Tett Board tried to facilitate with the Juniper Café and a new owner in the fall of 2018.

### **Facilitated Solution**

City staff attended a TCCL Board of Directors meeting on Friday January 18, 2019, and received direction from the Tett Board to re-start the process that was attempted in the fall of 2018. The process will be in alignment with the email request from the owner/operator of the Juniper Café, and City staff will lead the new lease negotiation process with the potential new owner. The process is as follows:

1. Tett Board to grant a 3 month extension to ECI to the current lease, to end on April 30, 2019, including any appropriate releases at the expiry of the lease extension;
2. ECI agrees to a 2 week shutdown during the extension period to facilitate the City's work in that space;
3. The RFP for a café operator is postponed immediately;
4. The City to lead negotiations of a new lease with a confirmed buyer of the Juniper Café. The negotiation will be with the buyer, understanding that the current ownership wishes to sell the business and move on;
5. Mentorship by the current owners to the potential new owner/operator of the business would be permitted during the 3 month extension to ECI. If further mentorship is required, that would be provided off-site to assist the transition of ownership and operations;
6. The lease with the new owner of the Juniper Café would be generally offered on terms and conditions as per the current RFP including a 3 year first term, plus an option to renew for a 2<sup>nd</sup> term of 2 years;
7. The City and the Tett Board will assess the new purchaser as follows:
  - Experience;
  - Financial references;
  - Proposed food services plan; and
  - Statement regarding vision and fit;
8. If there is no confirmed purchase and sale agreement, the lease will end April 30, 2019, and the Tett Board will likely continue with the RFP process to find a new café tenant.

Staff believe this process responds to the request made by the current owners of the Juniper Café to City staff, is consistent with what was offered by the Tett Board in the fall of 2018, and

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will allow all parties to work together to a final solution that will retain the Juniper Café at the Tett under new ownership.

**Existing Policy/By-Law:**

Not applicable

**Notice Provisions:**

Not applicable

**Accessibility Considerations:**

Not applicable

**Financial Considerations:**

Not applicable

**Contacts:**

Peter Huigenbos, Director, Real Estate & Environmental Initiatives 613-546-4291 extension 3148

**Other City of Kingston Staff Consulted:**

Colin Wiginton, Cultural Director, Cultural Services

**Exhibits Attached:**

Exhibit A Email Request from Amber Thom, Owner/Operator of the Juniper Café

**From:** Amber Thom  
**Sent:** January-15-19 2:16 PM  
**To:** Hurdle,Lanie  
**Subject:** Re: Juniper Cafe

Hello again,

What we would like to propose is an extension of 3-6 months on our current lease to find a perfect cafe operator and offer mentor ship to ensure a successful transition of ownership. There is talk of work being done to the Cafe space ie sealing the floors, putting in new doors, a new oven that would allow for cooking of meats on-site. We would be happy to close our cafe for two weeks (pay the staff) to allow for this critical work to get done.

We would like to discuss ANY options here.

Thank you for listening.

**Amber Thom**  
**Owner/Operator**  
The Juniper Cafe & Catering  
370 King Street West  
Room 118  
The Tett Centre for Creativity & Learning  
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