

# TORONTO STAFF REPORT

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March 11, 2005

To: Etobicoke York Community Council

From: Acting Director, Community Planning, West District

Subject: Final Report  
Commercial Outdoor Roof Top Patio Study  
Etobicoke Lakeshore – Ward 5

Purpose:

This report recommends an area specific set of regulations to be placed in the Etobicoke Zoning Code for commercial outdoor roof top patios on both sides of Bloor Street West between Thompson Avenue/Montgomery Road and Prince Edward Drive.

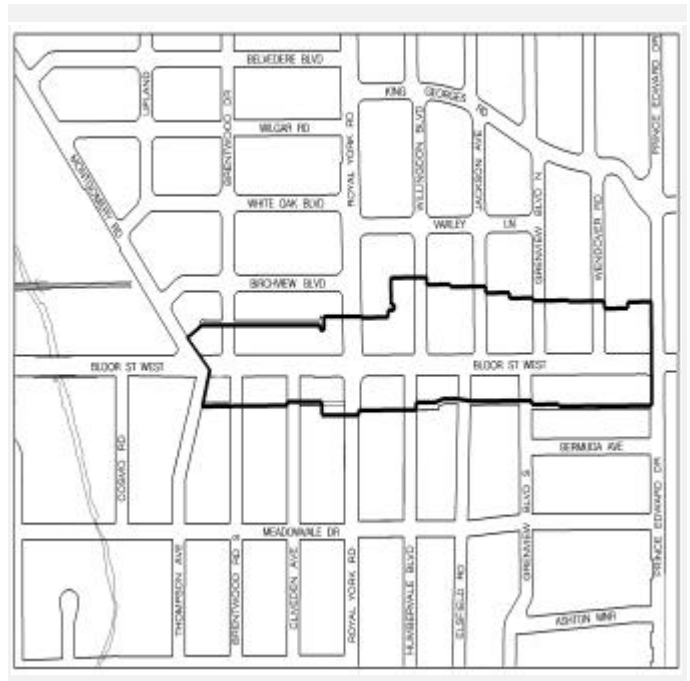
Financial Implications and Impact Statement:

There are no financial implications resulting from the adoption of this report.

Recommendations:

It is recommended that City Council:

- (1) amend the Zoning Code for the former City of Etobicoke substantially in accordance with the draft Zoning By-law Amendment attached as Attachment No. 2; and
- (2) authorize the City Solicitor to make such stylistic and technical changes to the draft Zoning By-law Amendment as may be required.



Background:

(1) Proposal

On May 18, 19, and 20, 2004, City Council adopted an Interim Control By-law for the area consisting of both sides of Bloor Street West between Montgomery Road and Thompson Avenue to the west and Prince Edward Drive to the east. The purpose was to prohibit commercial outdoor roof top patios in that area until a review was undertaken of the land use policies to determine if zoning and licensing requirements require revisions. The review for the area has been completed and the new regulations that are proposed for this type of use are attached to this report.

(2) Study Area and Surrounding Area

Both sides of Bloor Street West are lined with one to three storey commercial or mixed-use buildings and some taller apartment buildings at two intersections. Only one commercial outdoor roof top patio exists in the study area. Another was proposed, but has not been built as a result of the interim control by-law.

The abutting properties generally contain the following uses:

North: detached houses and some parking lots

South: detached houses

East: mixed use 1-3 storey commercial and mixed-use buildings

West: mixed use 1-3 storey commercial and mixed-use buildings

(3) Official Plans

On November 26, 2002, City Council adopted the new Official Plan for the City of Toronto. The Minister of Municipal Affairs and Housing approved the new Official Plan, in part, with modifications. The Minister's decision has been appealed in its entirety and will be at the Ontario Municipal Board in the future.

The new Official Plan designates this as a Mixed Use Area, and permits a broad range of commercial, residential, restaurant, entertainment, culture and institutional uses. Areas with this designation are intended to absorb growth and intensify in future. Development criteria for this area are aimed at minimizing the impact of new development on neighbouring established residential uses.

The former Etobicoke Official Plan designates this as Commercial Residential Strip. This is considered a traditional commercial and mixed-use area that provides extensive areas of retail activity and the main concentration of areas for residential development and intensification.

Commercial outdoor roof top patios would be considered accessory uses to restaurants and would therefore be an allowed use in both Official Plans.

(4) Zoning Code

The Bloor Street West frontages and the parking lots adjacent to the north are zoned Limited Commercial – Avenues (AV) as a result of the Kingsway Bloor Street West Avenues Study and Urban Design Guidelines that were implemented in February, 2000. This zoning permits an appropriate mix of residential and non-residential uses and recognizes the existing residential areas that abut these uses to the rear.

Restaurant uses are permitted in the AV zones. Supplementary uses for restaurants include regulations for at-grade patios but there are no regulations for commercial outdoor roof top patios. Therefore size, setback, screening and noise levels have not been regulated. The purpose of this report is to provide recommendations on those regulations.

(5) Community Consultation

Three community meetings were held on October 6, 2004, November 24, 2004 and January 26, 2005. Approximately 55 people attended the first meeting, 35 attended the second and 30 attended the third. The first meeting was to get ideas from the community about what regulations they wanted for commercial outdoor roof top patios. The second meeting participants were presented with a draft set of regulations and asked for comments. Several of the measurements were not put in the draft, as further consultation was required with the noise inspector. The third meeting invited all of Ward 5, as the Councillor is considering whether the regulations should apply to the entire ward. Community concerns included: noise, increased traffic and parking, overlook, loss of enjoyment of backyards, littering, disrupting the neighbourhood, and light pollution.

Comments:

Commercial outdoor roof top patios have become more popular, in part, as a result of the no-smoking by-law that has come into effect in the last few years. Restaurant and bar patrons are no longer allowed to smoke inside these establishments. Patios are essentially limited to late spring, summer and early fall days when the temperature and lack of precipitation provide an opportunity to be outside. One commercial outdoor roof top patio currently exists in the area and it is expected that more applications will be made for this accessory use.

The study area is a popular main street in west Toronto with many restaurants and bars to serve the local and broader community's dining and entertainment needs. Urban Design Guidelines have been established for the development of new buildings and renovation of existing buildings, however they do not address commercial outdoor roof top patios. As there are no regulations in place for the use, and these uses are likely to become more in demand, it is necessary to develop and adopt regulations for commercial outdoor roof top patios.

The attached draft by-law (Attachment 2) addresses the issues that were encountered through the community consultation process and discussions with the By-law Enforcement Division of Urban Development Services.

The following regulations are proposed for any commercial outdoor roof top patio that is being considered for the study area.

A commercial outdoor roof top patio shall:

- (a) not have any portion of a commercial outdoor roof top patio located any closer than 40 metres from a residential zone, measured horizontally at grade;
- (b) only be allowed on the front half portion of a building, abutting Bloor Street West;
- (c) have a maximum area of 20 percent of the floor area used for patron seating area inside the restaurant;
- (d) have a 1.8 metre high acoustical wall erected around the perimeter of the patio. The height of the wall facing Bloor Street West may be reduced to 1.2 metres in height;
- (e) be prohibited from providing space for the following: dance floor, stage, disc jockey, television, an area dedicated to recreational activities, and any other entertainment areas;
- (f) have any lighting directed away from adjoining properties and streets; and
- (g) gain regular ingress and egress from the interior of the building, and any exterior stair access shall only be used for emergency and fire safety purposes, as may be required by the Ontario Building Code.

(6) Noise

Noise from commercial outdoor roof top patios was a major concern for the residents. Patios that sit on the back half of the roof would be directly adjacent to some of the back yards of houses that are located next to the commercial uses in the study area. Some blocks are separated by lanes or parking lots that provide additional separation, but even with that additional separation, the commercial building is generally located within 16 metres of a residential lot. Some commercial buildings have no separation from the rear lanes.

The issue of noise is proposed to be resolved through several of the regulations outlined the draft by-law. The first is the introduction of a minimum distance separating the commercial outdoor roof top patio from the residential zone. Through discussions with City staff and the community it has been determined that the separation should be 40 metres. That distance will allow commercial outdoor roof top patios on most of the buildings fronting the north side of Bloor Street West between Royal York Road and Prince Edward Drive. The other buildings and blocks in the study area are too close to residential uses. This alone will not solve the potential noise issue, therefore four other regulations respecting noise have been added.

A further requirement to mitigate noise is for an acoustical wall to be constructed around the perimeter of the commercial outdoor roof top patio. This will further reduce the noise from the use and also screen it from the adjacent residential properties. A height of 1.8 metres is also sufficient to eliminate any overlook into residential backyards. A 1.2 metre height will be allowed on the side of the patio facing Bloor Street West to allow views from the patio. The acoustical wall and commercial outdoor roof top patio definitions are contained in the draft by-law (Attachment 2).

Noise increases as the number of patrons increase. The third regulation restricts the area of the roof top patio to 20 percent of the floor area devoted to patron seating inside the restaurant. This regulation clearly indicates to all those wishing to establish a commercial outdoor roof top patio that the use is accessory and incidental to the restaurant or bar inside the building. The number of patrons is limited on the roof top patio due to its size, thus reducing the noise potential.

The types of activities allowed on roof top patios can also increase the noise levels. A regulation that prohibits any part of the commercial outdoor roof top patio from being used for the purposes of a dance floor, stage, disc jockey, television, area dedicated to recreational activities and any other entertainment area will also reduce noise levels. Patrons will still enjoy sitting at tables and being served food and beverages. The above regulations will generally reduce noise levels for most commercial outdoor roof top patios.

In order to keep the patrons out of back lanes adjacent to residential uses, and thereby reduce noise, a regulation has been added to restrict access to the commercial outdoor roof top patio to within the building. There may be occasion to require a fire escape for emergency exits, but it should not be used on a regular basis for patrons wishing direct access to the commercial outdoor roof top patio from the parking lot, lane or street.

(7) Overlook

Several of the regulations that are directed at reducing noise levels also have the added benefit of eliminating overlook into the adjacent residential areas. The acoustical wall will be opaque and 1.8 metres high, thus reducing much of the neighbours concern in that regard. It also eliminates the possibility of bottles or other litter being dropped or thrown from the commercial outdoor roof top patio into the neighbouring properties. The location of the commercial roof top patio on the front portion of the commercial building and the setback from the residential zone, also create enough distance that the views into windows and back yards would be eliminated.

(8) Lighting

The neighbourhood was concerned that lighting from commercial outdoor roof top patios would be directed into their back yards and windows, rather than just onto the patios. To ensure this does not occur, a regulation requiring the lighting to be directed away from neighbouring properties has been included.

(9) Crooked Cue

The Crooked Cue was the last restaurant to apply for permission to build a commercial outdoor roof top patio. In reviewing this application with the proposed regulations City staff determined that it would not be able to meet the separation requirement of 40 metres as it is too close to the residential zone. Buildings on the block in which the Crooked Cue is located are not separated by commercial parking lots or other commercial uses.

(10) Parking

There was some discussion with the community on whether a commercial outdoor roof top patio would generate additional traffic and require more parking. The parking standards for restaurants are higher than most other surrounding former municipalities. There will be many days when the commercial outdoor roof top patios will not be in use due to the weather and, as a result, they will have limited impact on the parking supply.

In addition, commercial outdoor roof top patios are restricted in size, so there will not be a large increase in patrons to any restaurant with a commercial outdoor rooftop patio. No additional parking will be required for the commercial outdoor roof top patio floor area. This is consistent with not having a parking requirement for at grade patios.

(11) Separating Distances

A local resident requested that the by-law include separation distances between commercial outdoor roof top patios. There was concern that the cumulative impact of a number of commercial outdoor roof top patios on the same block would create a noise and nuisance problem for the adjacent residential neighbourhood. This kind of restriction starts to impact on the choice of location of a new restaurant and also favours the restaurant with the first commercial outdoor roof top patio, as subsequent roof top patios must then be located a defined distance away. An alternative solution to mitigate the impact is to restrict the size and require the noise attenuation measures noted above.

(12) Compatible Uses

A suggestion was made that commercial outdoor roof top patios may not be compatible with certain other uses located on the street, such as funeral homes and churches. The nature of the latter uses was considered to be in conflict with the social gatherings that would occur on a commercial outdoor roof top patio. The same could be said of any restaurant locating next to these uses; however, restaurants have never been restricted in terms of adjacent uses when both are allowed in a commercial strip. As mentioned previously, the best way to reduce the noise is through regulations that limit size and require other noise attenuation measures.

(13) Noise Impact Study

One of the proposed regulations was for the submission of a Noise Impact Study for review and approval by City staff. This report would have outlined the impacts of each proposed commercial outdoor roof top patio and recommend measures to reduce noise to acceptable levels. If deemed acceptable, the patio could be established; if unacceptable, the patio application would be denied. A processing fee for peer review of the study would be required of the applicant.

Upon consultation with the City Solicitor it has been determined that this requirement creates uncertainty and becomes, in effect, a conditional approval. The purpose of a zoning by-law is to set regulations that allow for as-of-right development to occur without further City staff or

Council approval, other than the Building Permit process. Planning staff have been advised that this regulation should not form part of the commercial outdoor roof top patio draft by-law.

(14) Hours of Operation

Local residents requested staff to consider placing restrictions on hours of operation for the commercial outdoor roof top patios. They noted that one existing commercial outdoor roof top patio does shut down at 10:00 p.m. each night, however others stay open later and become a nuisance, as patrons are making noise until 2:00 a.m. when the restaurants close.

A zoning by-law enacted under the Planning Act cannot be used to regulate the hours of business operation. Certain classes of businesses may be regulated under the licensing regime of the Municipal Act, provided it is for the purpose of one or more of the matters set out in the legislation. Those purposes include nuisance control.

A further means of controlling the hours of operation would be for local residents and councillors to ask the Alcohol and Gaming Commission for restrictions on hours of operation when the commercial outdoor roof top patio owner/operator applies for a liquor licence for the expanded use.

Conclusions:

Commercial outdoor roof top patios are becoming more popular. The subsequent study and community consultation meetings resulted in a set of regulations (see the attached draft by-law) that will effectively control the noise and nuisance factors from this type of use.

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Acting Director, Community Planning  
West District

List of Attachments:

Attachment 1: Zoning  
Attachment 2: Draft Zoning By-law Amendment

Attachment 1



Commercial Outdoor Rooftop Patio Study Area



ZONING

Applicant's Name:		CITY OF TORONTO	
Assessment Map	Zoning Code Map/s	scale:	
File No.	Drawing No. Bylaws/ Kinsway Block		





Attachment No. 2

Authority: Etobicoke York Community Council Report No. ~, Clause No. ~,  
as adopted by City of Toronto Council on ~ 2005.  
Enacted by Council: ~ 2005.

**CITY OF TORONTO**

**BY-LAW No. ~ -2005**

**To amend Chapters 320 and 324 of the Etobicoke Zoning Code with respect to commercial outdoor roof top patios with respect to certain lands located on Bloor Street West between Prince Edward Drive and Thompson Avenue/Montgomery Drive**

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 held at least one public meeting in accordance with the *Planning Act*;

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

1. That Section 320-23 of the Etobicoke Zoning Code be amended by adding a new Section O, as follows:  
  
“O. Restaurants and bar restaurants, on lands located within the area described in Schedule ‘A’ attached hereto shall be permitted to include a commercial outdoor roof top patio as an accessory use provided that the commercial outdoor roof top patio shall comply with the following regulations:

A commercial outdoor roof top patio shall:

- (a) not have any portion of a commercial outdoor roof top patio located any closer than 40 metres to a residential zone, measured horizontally at grade;
- (b) be located on the front half portion of a building abutting Bloor Street West;
- (c) have a maximum area of 20 percent of the floor area used for patron seating inside the restaurant;
- (d) have a 1.8 metre high acoustical wall erected around the perimeter of the patio with the wall being a minimum of 1.2 metres high abutting Bloor Street West;

- (e) not include any area that is used for any of the following purposes:
    - (i) dance floor,
    - (ii) stage,
    - (iii) disc jockey,
    - (iv) television,
    - (v) an area used for the purposes recreational activities, or
    - (vi) any other entertainment;
  - (h) direct any lighting away from adjoining properties and streets in the event that lighting is provided; and
  - (i) gain regular ingress and egress from the interior of the building, and any exterior stair access shall only be used for emergency and fire safety purposes, as may be required by the Ontario Building Code.
- 2.
- (a) “COMMERCIAL OUTDOOR ROOF TOP PATIO means an accessory use to a restaurant or bar restaurant, located on the roof of the building containing the restaurant or bar restaurant, that provides seating and service to patrons but does not provide entertainment and is open to the sky”; and
  - (b) “ACOUSTICAL WALL means an opaque wall without openings designed to minimize the flow of airborne and impact sound through the use of special materials, methods of construction and design”.
3. Chapter 324, Site Specifics, of the Etobicoke Zoning Code, is hereby amended to include reference to this By-law by adding the following to Section 324-1, Table of Site Specific By-laws:

<b>BY-LAW NUMBER AND ADOPTION DATE</b>	<b>DESCRIPTION OF PROPERTY</b>	<b>PURPOSE OF BY-LAW</b>
~ -2005 ~, 2005	Both sides of Bloor Street West between Prince Edward Drive, Montgomery Road and Thompson Avenue	To provide regulations for the establishment of outdoor commercial roof top patios.

ENACTED AND PASSED this ~ day of ~ , 2005.

DAVID MILLER,  
Mayor

ULLI S. WATKISS,  
City Clerk

(Corporate Seal)

**Toronto** Schedule 'A' BY-LAW



**COMMERCIAL OUTDOOR ROOFTOP PATIO REGULATIONS**

Applicant's Name:		<b>CITY OF TORONTO</b>	
Assessment Map	Zoning Code Map/s	scale:	
Drawing No. By/Low Schedules/Kingsway Bloor			