



STAFF REPORT ACTION REQUIRED

Final Report - Roof Top Patios Amendments to the Former City of Etobicoke Zoning Code

Date:	December 21, 2006
To:	Etobicoke York Community Council
From:	Director, Community Planning, Etobicoke York District
Wards:	Wards 1, 2, 3, 4, 5 and 6
Reference Number:	File No. 04 176108 WET 05 TM

SUMMARY

Council directed that planning staff undertake a study on restricting roof top patios throughout all of the former City of Etobicoke, in a manner consistent with a recent by-law that restricted commercial outdoor roof top patios on a portion of Bloor Street West in the Kingsway area.

The regulations developed for commercial outdoor roof top patios in the Bloor Street West area are appropriate for other areas and zones in the former City of Etobicoke where restaurants are permitted uses except in R3 and R4 zones in New Toronto. Staff also recommend that the regulations also include a restriction on the maximum size on the commercial outdoor roof top patio area to ensure that it is only a small part of the restaurant function.

RECOMMENDATIONS

The City Planning Division recommends that:

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

FINANCIAL IMPACT

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

DECISION HISTORY

Currently there are no standards for commercial outdoor roof top patios in the Etobicoke Zoning Code. A study for the Bloor Street West Kingsway area was requested by Council when a restaurant and billiard hall applied for a permit to place a large roof top patio on top of the second floor. As a result, an interim control by-law was placed on the area so that planning staff could study the area and recommend regulations for commercial outdoor roof top patios. The outcome of the study and implementing by-law imposed a number of regulations for new commercial outdoor roof top patios on a small section of Bloor Street West in the former City of Etobicoke. By-law No. 278-2005 became final and binding after an appeal to the Ontario Municipal Board was withdrawn.

The regulations establish a minimum setback of 40 metres from residential uses; requirements for an acoustical wall with certain height and noise attenuation properties; restrictions on the size of the patios; restrictions on the use of the patios; restrictions on the access to the patios, among others.

Council also adopted the Etobicoke York Community Council motion requiring a study that would establish regulations for commercial outdoor roof top patios over the entire former City of Etobicoke.

COMMENTS

The Bloor Street West Commercial Outdoor Roof Top Patio Study established a number of regulations that protect adjacent residential uses from the noise, light and increased patron visibility of commercial outdoor roof top patios. The regulations in the Bloor Street West by-law appear to be appropriate for most of the other areas in Etobicoke that allow restaurant uses and commercial outdoor roof top patios. These will be placed in the Supplementary Section of the Zoning Code to cover all zones. However, since restaurants are allowed in R3 and R4 zones in New Toronto, a further restriction has been added to prohibit them in residential areas.

The following regulations are proposed:

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 the building;
- (c) have a maximum area of 50 square metres or 20 percent of the floor area used for patron seating inside the restaurant, whichever is less;
- (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 the street;
- (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. mechanical, electrical or electronic music equipment,
 - vi. live bands, or
 - vii. an area used for the purposes of recreational activities;
- (f) direct any lighting away from adjoining properties and streets in the event that lighting is provided;
- (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; and
- (h) will not be allowed in any residential zone.

In addition, definitions for Commercial Outdoor Roof Top Patio and Acoustical Wall will be added to the Zoning Code.

The proposed by-law is different than the Bloor Street West by-law because it provides a maximum gross floor area cap for commercial outdoor roof top patios. The Bloor Street West by-law was designed after extensive study of the size of the buildings in that particular area.

In the case of an Etobicoke-wide by-law, the buildings that could house restaurants and commercial outdoor roof top patios range widely in size. As a result, it is necessary to impose a maximum area to ensure that the commercial outdoor roof top patio remains a small part of the main restaurant use. Large commercial outdoor roof top patios could also start to impact commercial and employment areas by generating increased traffic in those areas.

Community consultation

A community consultation meeting was advertised in the local newspaper paper and held on Wednesday, March 8th, 2006. Approximately 4 members of the public attended. Some questions and concerns were raised regarding the enforcement of the regulations as proposed and the process by which the City currently assesses noise originating from roof top patios.

Restaurants and bars located within the limits of the former City of Etobicoke will be required to comply with all regulations of the proposed by-law, prior to obtaining a building permit to construct a new roof top patio. Roof top patios are also subject to the regulations under Chapter 591 of the Toronto Municipal Code, Noise. This By-law regulates hours of operation of audio equipment and general limitations on sound levels.

In the event that a roof top patio is emitting noise causing disturbance to the public and is in violation of the Noise By-law, Municipal Standards and Licensing staff (MLS) may proceed with enforcement following an investigation.

Typically, an investigation would take place once MLS staff have received one or more complaints from area residents. Once the complaint(s) is received, staff will issue a Warning Notice to the owner of the establishment and send out a “Noise Log” to the complainant(s), in which they can record the specific times and describe the type noise emitted. Charges may be laid on basis of the evidence provided in the “Noise Log” along with any other information pertaining to the complaint(s). The resident(s) directly involved in the complaint will be asked to appear in Court as witnesses.

Alternatively, residents may direct any noise complaints to the Toronto Police Services, as they also have jurisdiction over the Noise By-law.

Should noise become a chronic problem with a roof top patio as part of a licensed premises, any convictions against the establishment arising from noise charges laid may be used as evidence for a report to the Toronto Licensing Tribunal to suspend or revoke the business licence. The Business Licensing and Issuing Office of Municipal Licensing and Standards will determine if a Business Licensing Tribunal Hearing should be held in this regard. Similarly, the Alcohol and Gaming Commission of Ontario (AGCO) will have the authority to request the suspension or revocation of the liquor licence as a result of noise disturbance created on the exterior of the licensed premises.

MLS staff were consulted in the preparation of this report.

CONTACT

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SIGNATURE

Gregg Lintern, MCIP, RPP
Director, Community Planning
Etobicoke York District

ATTACHMENTS

Attachment 1: Draft Zoning By-law Amendment

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Authority: Etobicoke York Community Council Report No.-, Clause No. - , as adopted by City of Toronto Council on – 2007.

CITY OF TORONTO

BY-LAW No. - 2007

To amend Chapters 320, 330, 340 and 350 of the Etobicoke Zoning Code and to repeal City of Toronto By-law 278-2005 with respect to commercial outdoor roof top patios located in the area comprised by the former City of Etobicoke.

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 Sections 320-23, 330-43, 340-20, and 350-25, excluding R3 and R4 zones in Section 350-25 of the Etobicoke Zoning Code be amended by adding a new Section O, as follows:

“O. Restaurants, bar restaurants and banquet halls 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 rooftop patio shall:

- (a) not be located any closer than 40 metres to a lot in a residential zone, measured horizontally at grade;
- (b) be located only within the half of the roof area that is closest to the front wall of the building;
- (c) have a maximum area of 50 square metres or 20 percent of the floor area used for patron seating inside the restaurant, bar restaurant or banquet hall, whichever is less;
- (d) have a 1.8 metre high acoustical wall erected around the perimeter of the patio, provided the acoustical wall is a maximum of 1.2 metres high along the street edge of the building;

(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) mechanical, electrical, or electronic music equipment,
- (vi) live bands,
- (vii) an area used for the purpose of recreational activities;

(f) direct any lighting away from adjoining properties and streets in the event that lighting is provided; 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.

2. For the purpose of this By-law:

(a) “COMMERCIAL OUTDOOR ROOF TOP PATIO” means an ancillary use to an restaurant, bar restaurant or banquet hall, located on the roof of the building containing the restaurant, bar restaurant or banquet hall, that provides an outdoor patron area; and

(b) “ACOUSTICAL WALL” means an opaque wall without openings designed by a qualified acoustical engineer and constructed in accordance with the design to minimize the flow of airborne and impact sound from within a commercial area outward through the use of special materials, methods of construction and design.

3. Site Specific By-law No. 278-2005 be hereby repealed:

ENACTED AND PASSED this day of , 2007

DAVID MILLER,
Mayor

Ulli S. Watkiss,
City Clerk

(Corporate Seal)