



REPORT FOR ACTION

Temporary Use Zoning By-law to Expand Permissions for Outdoor Patios for Bars and Restaurants

Date: June 25, 2020

To: Planning and Housing Committee

From: Chief Planner and Executive Director, City Planning Division

Wards: All

SUMMARY

This report recommends temporary use by-laws pursuant to Section 39 of the Planning Act to ease zoning restrictions on outdoor patios associated with eating establishments, take-out eating establishments, and recreation uses. The proposed by-laws complement the proposed CafeTO program to allow expanded patios on City boulevards and rights-of-way and the by-laws match the time-frame of the program. The intent of the temporary use by-laws is to support the ability of restaurants and bars to respond to physical distancing requirements associated with the COVID-19 pandemic, by increasing the amount of outdoor space for patrons.

One temporary use by-law is proposed as an amendment to the city-wide harmonized Zoning By-law (569-2013). The second temporary use by-law will address properties that remain subject to the former municipal zoning by-laws.

The by-laws would allow a modest increase to the maximum size of outdoor patios and would remove restrictions that might prevent an outdoor patio located in front of buildings. The by-laws have particular consideration for non-residential properties with dedicated surface parking in front of the building, by permitting patios notwithstanding parking requirements. The by-laws are proposed to expire on November 16, 2020, to coincide with the end of the CafeTO program.

The proposed by-laws are consistent with the Provincial Policy Statement (2020) and conforms with A Place to Grow: Growth Plan for the Greater Golden Horseshoe (2019).

RECOMMENDATIONS

The Chief Planner and Executive Director, City Planning recommends that:

1. City Council enact zoning by-law amendments substantially in accordance with Attachments 1 and 2.

2. City Council authorize the City Solicitor to make such stylistic and technical changes to each zoning by-law amendment as may be required.

3. City Council direct the City Solicitor and appropriate City staff to attend and support the temporary use by-laws in their current form, should either be appealed to the Local Planning appeal Tribunal within the statutory timeframe of the Planning Act.

FINANCIAL IMPACT

The City Planning Division confirms that there are no financial implications resulting from the recommendations included in the report in the current budget year or in future years.

DECISION HISTORY

A report titled "CaféTO - Increasing Outdoor Dining Space for Toronto Restaurants and Bars", dated June 8, 2020, has been submitted for consideration by the Executive Committee at its scheduled meeting on June 22, 2020. The report provides a package of recommendations that collectively pause certain elements of Chapter 742 (Sidewalk Cafés, Parklets and Marketing Displays), which sets out a permitting system for sidewalk cafés. The goal of the proposed CafeTO program is to support local restaurants and bars and their employees by allowing the expeditious and wide-spread roll-out of café extensions in the public right-of-way, during an expected period of time when they will be under considerable occupancy constraints. The report also recommends that City Council request the Chief Planner and Executive Director, City Planning to report to the July 13, 2020 meeting of the Planning and Housing Committee on a draft temporary use by-law pursuant to Section 39 of the Planning Act, to amend on a temporary basis zoning regulations respecting outdoor patios located in front of buildings and ancillary to eating establishments and take-out eating establishments.

PROPOSAL

Staff are proposing temporary use by-laws to ease restrictions on outdoor patios associated with eating establishments, take-out eating establishments, and recreation uses. One by-law would amend the harmonized, city-wide Zoning By-law (569-2013) and the other would address properties subject to the zoning by-laws of the former municipalities. The temporary use by-laws would apply across the entire city, but its regulations would only affect zones that permit eating establishments, take-out eating establishments, and recreations uses. The proposed by-law specifies an expiration date (November 16, 2020) which coincides with the proposed conclusion of the CafeTO program. On that date, the current zoning restrictions on outdoor patios would resume.

The permissions in the proposed temporary use by-laws include:

- permitting surface outdoor patios in Local Commercial zones (CL) in Zoning By-law 569-2013 and similar zones in the former municipal zoning by-laws, which otherwise permit restaurants but not outdoor patios, subject to numerous conditions;
- removing restrictions in the Employment Industrial zones of Zoning By-law 569-2013, which limit the amount of front yard an outdoor patio may occupy and require a setback from the front lot line;
- allowing an outdoor patio to occupy the area of non-residential parking spaces;
- increasing the permitted maximum area of surface outdoor patios to the greater of 50 square metres or 50 percent of the establishment's interior floor area. (Zoning By-law 569-2013 sets a maximum size in most zones as the greater of 30 square metres or 30 percent of the establishment's floor area area.)

Other zoning restrictions on outdoor patios would remain in place, including setback requirements that manage the impact of outdoor patios on nearby properties, prohibition on entertainment, fencing requirements, and limitations on patios located above the first storey of a building. The permission for a larger maximum patio size would not apply to patios located in a rear yard or a side yard that abuts a Residential zone.

The purpose of the by-laws is to provide increased opportunities for outdoor patios by easing restrictions. This includes a moderate increase to the permitted size of outdoor patios, recognizing that when they re-open, many restaurants and bars are expected to face occupancy constraints as a result of physical distancing requirements associated with COVID-19. With respect to lands subject to Zoning By-law 569-2013, the temporary use by-law will also apply to recreation uses, which often include ancillary bar or food-service. The temporary use by-law does not propose any changes to zoning regulations for outdoor patios in Open Space zones, as those regulations are already more permissive than other zones.

Not every property or eating establishment will be able to provide a patio on private property. The intent of the temporary use by-laws is to generally facilitate opportunities for outdoor patios as a complement to the CafeTO program, which provides opportunities for outdoor patios on public property.

BACKGROUND

Proposed CafeTO Program

The restaurant industry is an essential contributor to the life and vitality of Toronto's streets and has been particularly affected as a result of the COVID-19 pandemic closures. When they are permitted to re-open, it is expected that restaurants and bars in Toronto will be under considerable occupancy constraints to ensure physical distancing requirements in their establishments can be met.

The City is positioned to support local businesses and their employees during this difficult transition by allowing the expeditious and wide-spread roll-out of café extensions in the public right-of-way, while waiving the fees that normally accompany

this process. Other jurisdictions worldwide that have begun their recovery processes have employed similar strategies.

This measured, common-sense approach encourages our collective economic revival, protects and supports our business community, maintains public safety and animates our main streets.

In order to achieve this goal, a primary requirement is to pause certain elements of Chapter 742 (Sidewalk Cafés, Parklets and Marketing Displays), which sets out a permitting system for sidewalk cafés, a term which includes parklet cafés.

Zoning Restrictions on Private Patios

Outdoor patios on private property are regulated by zoning. The harmonized city-wide Zoning By-law (569-2013) includes regulations that consider outdoor patios not to be primary land uses, but rather ancillary to restaurants and bars (among other uses) and generally subordinate to indoor space. Zoning permissions for outdoor patios are limited to many (but not all) zones where eating establishments and take-out eating establishments are permitted. For most zones, regulations limit the maximum size of an outdoor patio to 30 square metres, or 30 percent of the interior floor area of the associated establishment, whichever is greater. In addition to the size limitation, zoning regulations manage the potential impact of the patio on nearby properties through setback requirements, rear-yard fencing requirements, a prohibition on entertainment, and limitations on outdoor patios located above the first storey (e.g. rooftop patios).

Temporary Use By-laws

Section 39 of the Planning Act provides authority to municipalities to pass temporary use by-laws. Such a by-law is a zoning by-law to authorize the temporary use of land, buildings or structures for any purpose that is otherwise prohibited by the municipality's zoning. At times, it is in the public interest to permit lands to be used for a particular use on a temporary basis, even though the use may not comply with the Official Plan or zoning by-law. A temporary use by-law must define the area to which it applies and specify the time period in which it will be in force. Chapter 5.1.5 of the Official Plan addresses temporary use by-laws.

Statutory Public Meeting Comments

In making their decision with regard to these proposed temporary use by-laws, Council members have had an opportunity to view the oral submissions made at the statutory public meeting held by the Planning and Housing Committee, with regard to this proposal, as these submissions are broadcast live over the internet and recorded for review.

COMMENTS

Role of Outdoor Patios in 2020

Policy 1 of Chapter 3.5.1 of the Official Plan states that Toronto's economy will be nurtured and expanded by maintaining a strong and diverse economic base. The restaurant industry is an essential contributor to the life and vitality of Toronto's streets and has been particularly affected as a result of the COVID-19 pandemic closures.

When they are permitted to re-open, it is expected that restaurants and bars in Toronto will be under considerable occupancy constraints to ensure physical distancing requirements in their establishments can be met. Transportation Services, in consultation with Toronto Public Health, Municipal, Licensing and Standards and Economic Development and Culture, is prepared to establish the CaféTO program to provide local restaurateurs with the tools, guidance and resources they require to quickly adapt to forthcoming re-opening responsibilities, particularly related to the opportunity to increase capacity in their establishments through the use of outdoor space to achieve physical distancing requirements. Temporary use by-laws to ease zoning restrictions on outdoor patios on private property will complement this strategy.

The proposed temporary use by-laws conform to the Official Plan by supporting an important economic sector on a temporary basis, while maintaining regulations to manage the impact of outdoor patios on nearby properties.

Commercial Local Zones

Commercial Local (CL) zones are zones in Zoning By-law 569-2013 that permit small scale commercial and retail activity. Some of the former municipal zoning by-laws include similar zones. Many of these areas comprise low-scale retail plazas and strip malls and provide local retail and services to surrounding residential neighbourhoods. Surface parking areas or open space on some of the properties could provide the opportunity for outdoor patios.

Outdoor patios are not currently permitted in CL zones. The proposed temporary use by-laws would permit outdoor patios in these zones and the corollary zones of the former municipal by-laws. By definition, these patios must be ancillary to eating establishments, take-out eating establishments, and recreation uses. Providing this permission on a temporary basis will allow local restaurants and bars in these zones to establish outdoor patios that would otherwise not be permitted. The outdoor patios permitted in these zones will be subject to conditions intended to mitigate their impact, including a minimum setback of 30 metres from a lot in a residential zone which does not permit restaurants.

Parking

Surface parking areas on retail plazas and other commercial properties may provide an opportunity for adjacent restaurants and bars to establish temporary outdoor patios in

2020. The temporary use by-laws include provisions that will allow any parking spaces occupied by an outdoor patio to continue to count towards the zoning parking requirements for the property. The purpose of these provisions is to ensure the requirement to provide parking on any given property does not prevent a restaurant or bar from establishing an outdoor patio.

Front Yard Patios in Employment Zones

Employment Light Industrial (EL), Employment Industrial (E), and Employment Office (EO) zones in Zoning By-law 569-2013 all permit outdoor patios. In these zones, outdoor patios must fit within the minimum setbacks for buildings and patios located within the front yard of a property may not exceed 20 percent of the area of the front yard. For employment areas, the proposed temporary use by-laws remove the front setback requirement for patios and size limitation relative to the size of the front yard. Easing these restrictions will permit restaurants and bars in these areas to have more extensive patios located in front of buildings.

Patio Size

In Zoning By-law 569-2013, zones in the Commercial Residential and in the Employment categories limit the maximum size of an outdoor patio to 30 square metres, or to 30 percent of the interior floor area of the premises that it is associated with, whichever is greater. This size limitation is intended to manage the overall scale and impact of outdoor patios and it also reflects the principle that an outdoor patio is subordinate to the associated restaurant or bar, and not the primary capacity of a premises.

The temporary zoning by-laws propose to relieve this restriction by setting a maximum size of 50 square metres, or 50 percent of the interior floor area of the premises that it is associated with, whichever is greater, for outdoor patios in CL, CR, CRE, EL, E, and EO zones. This will provide restaurants and bars to operate larger outdoor patios than would otherwise be permitted. Notwithstanding this increased size permission, outdoor patios may be required to operate under capacity restrictions that are not part of the Zoning By-law but are instead related to public health requirements and/or liquor license requirements.

Restrictions on Outdoor Patios

There are cases where outdoor patios are the source of nuisance and complaints, most often due to noise. In employment areas, they can be the source of conflicts with nearby industrial operations. The proposed temporary use by-laws maintain a number of zoning restrictions in order to mitigate the potential for conflicts.

The proposed temporary use by-law continues to permit outdoor patios only as an ancillary use (and not as a primary use) associated with an eating establishment, temporary eating establishment, or recreation use.

Furthermore, the temporary use by-law leaves untouched a number of zoning provisions that regulate patios and which are intended to manage their impacts on nearby properties. In Zoning By-law 569-2013, these include:

- a prohibition on entertainment, such as performances, music and dancing;
- a minimum setback of 30 metres from any residential zone;
- a minimum setback of 40 metres from any residential zone for an outdoor patio located above the first storey (e.g. a rooftop patio);
- fencing requirements for outdoor patios located in a rear yard that abuts a property in a residential zone.

The temporary use by-laws would ease zoning by-law restrictions as described in this report. Applicable provincial legislation would continue to apply, including orders under the Emergency Management and Civil Protection Act, as well as other applicable by-laws, including those regulating nuisances such as noise.

Community Consultation

Due to time constraints and the physical distancing requirement associated with COVID-19, the usual in-person community consultation program has not been conducted with respect to the proposed temporary use by-law. Information about the proposal has been provided on the City's web-site.

Conclusion

City Planning staff are recommending a temporary use by-law to ease restrictions on outdoor patios. The by-law complements the proposed CafeTO program by providing opportunities for new or expanded patios associated with eating establishments, take

out eating establishments, and recreation uses. Restaurants and bars may take advantage of these opportunities to shift capacity from indoor space to outdoor patios, as they adjust to physical distancing requirements related to the COVID-10 pandemic. The temporary use by-law would expire on November 16, 2020.

CONTACT

Michael Mizzi, Director, Zoning and Committee of Adjustment
City Planning Division, Tel. No. 647-458-8067
E-mail: Michael.Mizzi@toronto.ca

Kyle Knoeck, Manager, Zoning Section
City Planning Division, Tel. No. 416-578-2907
E-mail: Kyle.Knoeck@toronto.ca

Sebastian Cuming, Planner, Zoning Section
City Planning Division, E-mail: Sebastian.Cuming@toronto.ca

SIGNATURE

Gregg Lintern, MCIP, RPP
Chief Planner and Executive Director
City Planning Division

ATTACHMENTS

City of Toronto Data/Drawings

Attachment 1: Draft Temporary Use By-law (By-law 569-2013)

Attachment 2: Draft Temporary Use By-law (former municipal zoning by-laws)