

Supplementary Report - CaféTO 2023 and Beyond

Date: February 6, 2023

To: City Council

From: General Manager, Transportation Services, the Executive Director, Municipal Licensing and Standards, and the General Manager, Economic Development and Culture

Wards: All

SUMMARY

The purpose of this report is to provide a response to the request from Executive Committee for the General Manager, Transportation Services, the Executive Director, Municipal Licensing and Standards, and the General Manager, Economic Development and Culture to report directly to the February 7, 8 and 9, 2023 meeting of City Council to provide options that address CaféTO program transition concerns for 2023 including but not limited to matters such as a grace period for platform installations, amendments to the fee schedule and options that better enable businesses outside of Business Improvement Areas to fully participate in the program.

RECOMMENDATIONS

The General Manager, Transportation Services, the Executive Director, Municipal Licensing and Standards, and the General Manager, Economic Development and Culture recommend that:

1. City Council delete recommendation 2 in the report (January 17, 2023) from the General Manager, Transportation Services, Executive Director, Municipal Licensing and Standards and General Manager, Economic Development and Culture and replace it with the following:

City Council amend City of Toronto Municipal Code Chapter 441, Fees and Charges, Appendix C, Schedule 2 and Schedule 12, and Appendix E Schedule 1 by revising the permit fees for sidewalk cafés, curb lane cafés, marketing displays and adding new fees for patios in hardscaped parks and inspection fees in accordance with Attachment 1 to the Supplemental Report (February 6, 2023) from the General Manager, Transportation Services, Executive Director, Municipal Licensing and Standards and General Manager, Economic Development and Culture.

2. City Council amend City of Toronto Municipal Code Chapter 742, Sidewalk Cafés, Parklets and Marketing Displays, as follows:

a. Insert a new Section in Section 742-10.4 to read as follows:

C. Despite subsections B(6) and (7), curb lane café and public parklet permit holders will not be required to install a platform in their permit area from May 15, 2023 to July 31, 2023, inclusive, or an applicable portion of that period, if the permit holder:

(1) Has submitted a platform plan designed, signed and stamped from a professionally licensed designer by July 1, 2023 showing a platform complying with subsections B(6) and (7) the permit holder will install in their permit area in accordance with subsection C(3);

(2) Installs a temporary ramp in the permit area which provides for safe access to the permit area and meets the following requirements during any period when a platform is not installed:

- (a) Must be a minimum of 1.0 metre wide;
- (b) Must have contrasting colours with the roadway and sidewalk;
- (c) Must have a slip-resistant surface and be visible at night;
- (d) Must be stable so that it does not shift or move when used;
- (e) Must be positioned to allow for adequate space at the bottom of the ramp for someone using a mobility device to turn and navigate into the café area;
- (f) Must not be affixed to the sidewalk, curb edge or street with screws, bolts or any other materials; and

(3) Installs a platform in the permit area in accordance with subsections B(6) and (7) by no later than August 1, 2023.

b. Amend Section 742.5.1 C to read as follows:

"A permit will not be renewed if the permit holder is in violation of this Chapter, violated this Chapter during the previous term of the permit, has unpaid fees or fines under this Chapter, or cannot produce a certificate of insurance for the permit area. A violation of this Chapter may include not complying with one or more conditions on their permit, having their permit suspended and/or having been issued an order under this Chapter."

c. Insert a new Section 472-9.4 H to provide that the Executive Director, Municipal Licensing and Standards, may allow a permit area for a curb lane café not in a BIA to extend across the curb lane or parking area of an adjacent property where the following requirements are met:

- i) the permit area is no longer than 12 m in length;
- ii) the adjacent property does not have a permit area, and
- iii) all other requirements of Article 10 are met.

FINANCIAL IMPACT

This supplemental report proposes reducing application and café permit fees in 2023 by 50%. The fees proposed in this supplemental report are projected to result in total program revenues of \$990,236 for Transportation Services and \$530,249 for Municipal Licensing and Standards in 2023. These revenues are not included in the 2023 Operating Budget Submission for Transportation Services or Municipal Licensing and Standards.

The program costs of CaféTO are included in the 2023 Operating Budget Submissions of Transportation Services, Municipal Licensing and Standards and Economic Development and Culture. Full program financial impacts are described in the Report (January 17, 2023) CaféTO 2023 and Beyond.

DECISION HISTORY

Executive Committee, at its meeting of January 31, 2023, requested the General Manager, Transportation Services, the Executive Director, Municipal Licensing and Standards, and the General Manager, Economic Development and Culture to report directly to the February 7, 8 and 9, 2023 meeting of City Council to provide options that address transition concerns for 2023. <https://secure.toronto.ca/council/agenda-item.do?item=2023.EX2.4>

COMMENTS

This report identifies options to ease the transition to a permanent and sustainable CaféTO program for restaurant operators.

Options for Amendments to the Fee Schedule

To address concerns related to the cost of participating in CaféTO in 2023, it is recommended that the full fee schedule proposed in the January 17, 2023 report be phased in over two years, with fees for 2023 set at 50% of the full amount to be charged in 2024. Should this option be adopted, it is recommended that this fee reduction be applied equally to all application, transfer and permit fees for new and existing sidewalk and curb lane cafés, to maintain a consistent and simple approach for all business operators.

Approving this option would mean that the full fees proposed in the January 17, 2023 report would not be implemented until the 2024 café season.

Reflecting the CaféTO program's context and public benefits, the proposed full fees for curb lane cafés are 55-72% lower than the rates approved by City Council in 2019 following industry consultation.

The projected CaféTO program costs and revenues below assume an uptake of 400 curb lane cafés in 2023. If program uptake increases significantly, overall program costs to the City will also increase.

Fee Option Overview - 50% of Café Fees in 2023 vs. Full Fees in 2024

| | 2023 (50%) | 2024 (100%) |
|---|--|--|
| Application Fee* | \$432.50 | \$865 |
| Sidewalk Café Permit Fee | \$22.07 per m2 (\$2.05 per sq. ft.) | \$44.14 per m2 (\$4.10 per sq. ft.) |
| Seasonal Curb Lane Café Permit Fee | \$66.21 per m2 (\$6.15 per sq. ft.) | \$132.42 per m2 (\$12.30 per sq. ft.) |
| Projected Program Costs** | \$4,385,791 | \$4,385,791 |
| Total Projected Revenue | \$1,520,485 | \$3,040,905 |
| Recovery of Program Costs | 35% | 68% |
| Subsidized Program Costs | \$2,865,305 | \$1,344,886 |

*An application fee is only required for a first-time application and is not paid if an existing permit is being renewed.

** 2024 program costs will be re-evaluated based on actual participation rates and cost of the 2023 program

If CaféTO permit fees for 2023 are reduced by 50% relative to the proposed full fee rate:

- In 2023, permit fees of \$1,540 will be charged for an average sized curb lane café of 23.27 m2 (247 sq. ft.);
- In 2023, permit fees of \$725 will be charged for an average sized sidewalk café of 32.83 m2 (355 sq. ft.); and
- The City can expect to recover approximately 35% of the direct costs required to deliver the CaféTO program in 2023.

In addition to the proposed 50% fee reduction for 2023, a technical amendment is recommended so that annual fee adjustments do not apply for sidewalk, marketing display or patio in a hardscape park permit fees until 2029. In the 2019 adoption of Chapter 742, Council directed that all existing sidewalk cafés and marketing displays have their fees phased in over 10 years and that inflation not apply to those fees during

that time, and these amendments will direct staff in that manner as well as extend this decision to patios on hard surfaced parks.

Options for Expanded Cafés Permit Areas for Restaurants Outside of Business Improvement Areas

To enable restaurant operators located outside the boundaries of a BIA to have a curbside café permit area that extends beyond their establishment's frontage, it is recommended that businesses located in these areas be permitted a café permit area up to 12 metres in length when an adjacent property does not have a permit and other conditions denoted in Chapter 742 are met.

As there will be no BIA to coordinate or mediate among business operators, City staff will need to review extension requests to ensure that a curbside café expansion in these locations do not conflict with a potential neighbouring curbside café. This may impact timelines for operators as in some cases they may need to wait for this review to be completed before they receive their permit and begin platform design. Staff will report back on the volume, impact and experience of customized (non-frontage aligned) curbside café permit areas in non-BIA locations along with the results of the CaféTO Curbside Lane Pilot Program for businesses in BIA areas, after the 2024 CaféTO season.

Grace Period for Temporary Platform Installations

Temporary platform installations in curbside café permit areas achieve City accessibility objectives, while improving safety and aesthetics in the general vicinity. Concerns have been raised by restaurants and BIAs about the cost of temporary platforms, which require a signed and stamped drawing from at minimum a Building Code Identification Number (BCIN) licensed designer. Restaurants and BIAs have also cited concerns about the reliability of supply chains to meet this requirement in a predictable manner.

To ease these concerns, it is recommended that a grace period for installation be allowed for CaféTO curbside café permit holders in 2023. This means that restaurant operators will be able to activate their approved dining area when safety equipment closing the curbside lane has been installed and their permit is issued provided other requirements are met, allowing for several weeks of revenue-generating opportunity from the café space prior to the requirement to install the platform.

In lieu of a platform being installed, these other temporary requirements will be in effect:

- Restaurant operators will have until July 1, 2023 to submit their temporary platform drawings. Operators wishing to obtain drawings in advance of the installation of their curbside lane closure will be able to do so upon receiving confirmation of their exact permit area, which is expected to occur through March, April and May.
- Temporary platform installations will be required by August 1, 2023.
- To address accessibility obligations in the interim, restaurant operators will be required to deploy a temporary ramp into their curbside café permit area until their

temporary platform is constructed. The CaféTO Guidebook will continue to contain comprehensive information about operator requirements for designing and installing temporary platforms and interim temporary ramp specifications.

- To ensure public safety, temporary accessible platform plans must be designed, signed and stamped by a professionally licensed designer. Restaurant operators have expressed concerns that this requirement represents new costs and administrative effort, versus the process first applied by the program which to date has required minimal operator inputs in order to establish curb lane cafés.
- A designed, signed and stamped temporary accessible platform plan from a professionally licensed designer is required to ensure:
 - the design meets Ontario Building Code and Chapter 742 requirements;
 - the structural integrity and the safety of the platform for patrons and other road users; and
 - the materials selected are appropriate.

To maintain the quick-start nature of deploying the seasonal elements of the CaféTO program, the City will continue to provide the service of developing engineering traffic plans for safety equipment placement for all cafés. Individual café areas will require their own site-specific platform plans which can be customized to operator specifications. In 2022, 55 CaféTO participants submitted and installed platform plans from licensed designers. Platform plans can be reused annually.

Should this report's recommendation regarding a grace period in 2023 for the installation of curb lane café platforms be approved, the following points should be considered:

- Orange "candlestick" pylons delineating the linear closure edge of the curb lane café area will be required until such time as the temporary platform is installed. This will result in an additional time requirement for equipment deployment by City crews and may result in installation delays.
- Additional program and enforcement staff resources will be required to manage a delayed installation approach given the expected increase in individual business operator interaction (e.g. additional outreach and inspections to ensure compliance).
- Café operators that fail to comply with the requirement to construct a temporary platform in 2023 will be subject to enforcement activity and their permit may not be renewed for the 2024 café season.

Increased Funding for the CaféTO Property Improvement Grant Program

In 2023, to assist participating restaurants in meeting the new requirements of the program, the City can significantly increase the funding available to defray costs associated with patio installation. Economic Development and Culture can reallocate funding across existing programs previously approved by Council, so that at least \$1,500,000 can be made available through the CaféTO Property Improvement Program to support operators with the cost of installing a temporary platform. This allocation of \$1,500,000 includes \$500,000 initially designated for the CaféTO Property Improvement Program in 2023 (referenced in the January 17, 2023 report), along with a reallocation

of \$1,000,000 of Toronto Main Street Recovery and Rebuild Initiative (MRRRI) funding notionally allocated at the time of program inception to the Commercial Space Rehabilitation Grant Program.

As reported to Council in 2021, there is flexibility to re-profile funding between certain MRRRI programs to better reflect changed circumstances, community priorities and program demand. Demand for the Commercial Space Rehabilitation Grant Program has been somewhat lower than originally anticipated, providing the City with the option to increase funding for the CaféTO Property Improvement Program to assist more restaurant operators during the program's transition to permanency and in view of the proposed requirement to install accessible platforms in curbside cafés.

Off-Street Patio Activations

Programs like CaféTO demonstrate how public space can be used in innovative ways to enhance neighbourhood vibrancy and economic activity. While the CaféTO program and Chapter 742 of the Municipal Code are focused on allowing commercial uses of the right-of-way for restaurant operators, there are other off-street City-owned properties that could be temporarily re-purposed as locations for outdoor patios or other activations.

Where existing resources and authorities allow, opportunities to assess, permit and lease City-owned property for such uses may be considered on a case-by-case basis -- using CaféTO fees as a reference point where appropriate -- pending the required analysis, costing, resourcing, approval and implementation of any new City program to provide for such uses on a broader scale.

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ATTACHMENTS

Attachment 1: Amendments to Chapter 441, Fees and Charges

Attachment 1 – Amendments to Chapter 441, Fees and Charges

Amend Appendix C – Schedule 2, Transportation Services by adding the fees in the table below:

| Ref No. | Service Fee | Description | Category | Fee Basis | Fee | Annual Adjustment |
|---------|---|-------------------------------------|-------------|------------------|-------------------------------|-------------------|
| 172 | Permits & Applications | Seasonal Fee: Curb Lane Café Permit | City Policy | Per Square Metre | \$132.42 (\$66.21 in 2023) | Yes |
| 173 | Sidewalk Cafés, Parklets and Marketing Displays | Inspection fee | City Policy | Per Inspection | \$94.29 | Yes |

Amend Appendix C – Schedule 12, Municipal Licensing and Standards by amending the fees in the table below:

| Ref No. | Service Fee | Description | Category | Fee Basis | Fee | Annual Adjustment |
|---------|-----------------------------|---------------------------------------|--------------------|------------------|--|-------------------|
| 455 | Licence and Permit Issuance | Application Fee: Sidewalk Café Permit | Full Cost Recovery | Per application | \$865.00 (\$432.50 in 2023) | Yes |
| 457 | Licence and Permit Issuance | Annual fee: Sidewalk Café permit | Market Based | Per Square Metre | \$44.14 (\$22.07 in 2023) *Annual adjustment to be applied starting 2029 | Yes |

| Ref No. | Service Fee | Description | Category | Fee Basis | Fee | Annual Adjustment |
|---------|-----------------------------|--|--------------------|------------------|---|-------------------|
| 459 | Licence & Permit Issuance | Annual fee: Marketing Display permit | Market Based | Per Square Metre | \$38.88 *Annual adjustment to be applied starting 2029 | Yes |
| 464 | Licence and Permit Issuance | Permit Transfer Fee: Sidewalk Café and Marketing | Full Cost Recovery | Per application | \$676.27 (\$338.13 in 2023) | Yes |

Amend Appendix C – Schedule 12, Municipal Licensing and Standards by removing the fees in the table below

| Ref No. | Service Fee | Description | Category | Fee Basis | Fee | Annual Adjustment |
|------------|-----------------------------|--|--------------|--------------------|--|-------------------|
| Remove 456 | Licence and Permit Issuance | Annual Fee: Sidewalk Café Permit: Central Zone | Market Based | Per Square Metre | \$90.08 | Yes |
| Remove 458 | Licence & Permit Issuance | Annual fee: Marketing Display permit: Central zone | Market Based | Per Square Metre | \$63.90 | Yes |
| Remove 462 | Licence and Permit Issuance | Monthly Fee Parklet Café Central Zone | Market Based | Each Parking Space | \$1,093.00 **subject to increase in accordance with Toronto Parking Authority | No |

| Ref No. | Service Fee | Description | Category | Fee Basis | Fee | Annual Adjustment |
|------------|-----------------------------|-------------------------------------|--------------|--------------------|---|-------------------|
| Remove 463 | Licence and Permit Issuance | Monthly Fee Parklet Café Outer Zone | Market Based | Each Parking Space | \$683.00 **subject to increases in accordance with Toronto Parking Authority | No |

Amend Appendix E – Schedule 1, Parks, Forestry and Recreation by adding the fees in the table below:

| Ref No. | Service | Fee Description | Category | Fee Basis | Fee | Annual Adjustment |
|---------|---------|---|--------------------|------------------|--|-------------------|
| 8.7023 | Parks | Application Fee: CaféTO Patio in Hardscaped Park Permit | Full Cost Recovery | Per application | \$865.00 (\$432.50 in 2023) | Yes |
| 8.7024 | Parks | Annual fee: CaféTO Patio in Hardscaped Park Permit | Market Based | Per Square Metre | \$44.14 (\$22.07 in 2023) * Annual adjustment to be applied starting in 2029 | Yes |