



REPORT FOR ACTION

CaféTO - Supplemental Report on Insurance Coverage Requirements

Date: June 26, 2020
To: City Council
From: City Manager and City Solicitor
Wards: All

SUMMARY

At its meeting on June 22, 2020, Executive Committee requested the City Manager and the City Solicitor to report directly to City Council at its meeting on June 29 on the implications of possibly altering the minimum liability insurance coverage for restaurants seeking to register a new patio.

This supplemental report has been prepared in consultation with the Director of Insurance and Risk Management as she advises on recommendations for appropriate insurance coverage.

RECOMMENDATIONS

The City Manager and City Solicitor recommend that:

This report be received for information.

FINANCIAL IMPACT

There are no financial implications beyond what has already been reported in EX14.1 CaféTO - Increasing Outdoor Dining Space for Toronto Restaurants and Bars.

The Chief Financial Officer and Treasurer has reviewed this report and agrees with the financial impact information.

DECISION HISTORY

At its meeting on June 22, 2020, the Executive Committee requested the City Manager and the City Solicitor to report directly to City Council at its meeting on June 29, 2020 on the implications of possibly altering the minimum liability insurance coverage requirements for restaurants seeking to register a new patio.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2020.EX14.1>

COMMENTS

Background and Implications

The report from the General Manager, Transportation Services, General Manager, Economic Development and Culture, Executive Director, Municipal Licensing and Standards, Chief Planner and Executive Director, City Planning, and Chief Purchasing Officer on CaféTO - Increasing Outdoor Dining Space for Toronto Restaurants and Bars (June 8, 2020) recommends that as part of the CaféTO program, the General Manager establish appropriate indemnification and insurance provisions for eating establishments that install sidewalk cafés or public parklets on City sidewalks or curb lanes.

The indemnity provisions would require that eating establishments indemnify the City for any liability incurred by the City as a result of an approval granted under the CaféTO program. This protects the City, and is consistent with requirements imposed under City of Toronto Municipal Code Chapter 742, Sidewalk Cafés, Parklets and Marketing Displays, for those operating a sidewalk café or public parklet under that Chapter.

The insurance provision would work in conjunction with the indemnity provision by providing the financial means for eating establishments to respond to and pay claims against the City to which the indemnity would apply. The City requires that eating establishments have insurance in place with sufficient coverage amounts as recommended by Insurance and Risk Management to ensure that if the City needs to rely on its indemnity provision, the eating establishment can meet their obligations through insurance. Among other things, the insurance coverage is in place to protect

the eating establishment and City from third party claims made in relation to the operation of the sidewalk café or public parklet.

For sidewalk cafés and public parklets approvals in the typical course, Chapter 742 stipulates that the amount of liability insurance is to be "satisfactory to the City of Toronto." Based on the recommendations of Insurance and Risk Management, staff have currently set the amount of liability insurance at \$2 million, as this amount is in line with other municipalities throughout the country and is believed to be the minimum amount eating establishments should carry to protect against third party claims.

The sidewalk cafés and public parklets operated under the CaféTO program will be located on City property, and as a result, the City may be named in legal actions arising from the operation of those installations by restaurants. By lowering the insurance coverage requirements for the CaféTO program, there is an increased risk that there may not be sufficient funds available to protect the City and the eating establishment in the event of a claim. Any amount owing to a claimant that exceeds the eating establishment's ability to pay, either through insurance or directly by the eating establishment, could be sought from the City in the event that a court finds the City partially liable (even 1 percent) for the injury or damage suffered by the plaintiff.

Given the allowances for expanded cafés and unique circumstances surrounding the CaféTO program in 2020, it is difficult to estimate the quantity, value or nature of the claims which could be made against the City. But if such claims are made and are successful, a reduced insurance requirement exposes both the City and the eating establishment to amounts awarded which exceed the reduced coverage.

Chapter 742 requires that all sidewalk café or public parklet permit holders carry at least \$2 million in liability coverage. Allowing new permit holders to carry less than \$2 million for these temporary areas may also attract complaints of inequity from other eating establishments who have been required to maintain at least \$2 million in liability coverage for their permanent café or parklet installations. This decision could be seen by those operators as setting a precedent for reduced levels of insurance going forward.

Council Discretion

City Council has the ability to set requirements for the CaféTO program including adjusting the amounts of required insurance coverage. Executive Committee, at its June 22 meeting, raised the possibility of reducing the minimum liability insurance requirement for the CaféTO program to \$1 million for the 2020 patio season and requested this report on the implications of doing so.

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SIGNATURE

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