



## CaféTO - Increasing Outdoor Dining Space for Toronto Restaurants and Bars

**Date:** June 8, 2020

**To:** Executive Committee

**From:** General Manager, Transportation Services, General Manager, Economic Development & Culture, Executive Director, Municipal Licensing & Standards, Chief Planner and Executive Director, City Planning, and the Chief Purchasing Officer

**Wards:** All

### SUMMARY

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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 of Toronto is uniquely 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. Parklet cafés are located in the closed curb lane and are referred to as "curb lane/parklet cafés in this report.

## RECOMMENDATIONS

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The General Manager, Transportation Services, General Manager, Economic Development & Culture, Executive Director, Municipal Licensing & Standards, Chief Planner and Executive Director, City Planning, and the Chief Purchasing Officer recommend that:

1. City Council authorize the General Manager, Transportation Services, in consultation with Municipal Licensing and Standards, to establish a program to allow for the review, approval and installation of sidewalk cafés, curb lane/parklet cafés or public parklets with areas denoted for physical distancing purposes from no earlier than July 1, 2020 to no later than November 15, 2020, inclusive, without applicants having to comply with certain requirements of Chapter 742, Sidewalk Cafés, Parklets and Marketing Displays. In establishing such a program, the General Manager shall consider:

- a. which requirements from Chapter 742, Sidewalk Cafés, Parklets and Marketing Displays should apply to sidewalk cafés, curb lane/parklet cafés or public parklets installed for the 2020 café season from no earlier than July 1, 2020 to no later than November 15, 2020 inclusive;
- b. establishing appropriate guidelines for the General Manager, Transportation Services to review and approve sidewalk cafés, curb lane/parklet cafés or public parklets with areas denoted for physical distancing purposes;
- c. establishing appropriate indemnification and insurance requirements to protect the City;
- d. advice from the Medical Officer of Health to ensure the health and safety of all persons using sidewalk cafés, curb lane/parklet cafés or public parklets with areas denoted for physical distancing purposes; and
- e. defining location, materials, usage, maintenance and removal requirements for sidewalk cafés, curb lane/parklet cafés or public parklets with areas denoted for physical distancing purposes to ensure the health and safety of all users of City highways.

2. City Council authorize the General Manager, Transportation Services, to approve applications to install and maintain sidewalk cafés, curb lane/parklet cafés or public parklets with areas denoted for physical distancing purposes for a term beginning no earlier than July 1, 2020 and ending no later than November 15, 2020 where the application complies with the program adopted by the General Manager, Transportation Services, under recommendation 1, and where the approval conflicts with Chapter 742, Sidewalk Cafés, Parklets and Marketing Displays, the approval of the General Manager shall prevail to the extent of the conflict.

3. City Council waive fees required under Chapter 742, Sidewalk Cafés, Parklets and Marketing Displays, Chapter 743, Streets and Sidewalks, Use of, and Chapter 441, Fees and Charges, for any sidewalk, curb lane/parklet café or public parklet approved

by the General Manager, Transportation Services under the program described in recommendation 1.

4. City Council amend Municipal Code Chapter 937, Temporary Closing of Highways, to delegate to the General Manager, Transportation Services until November 15, 2020 the authority to temporarily close to vehicular traffic the curb lanes or any portion thereof on any highway (with the exception of those highways listed in section 937-4) for a period up to and including 138 consecutive days from July 1, 2020 to November 15, 2020, inclusive, for the purpose of permitting a curb lane/parklet café or public parklet approved by the General Manager, Transportation Services under the program described in recommendation 1, and to exempt the General Manager, Transportation Services in carrying out this delegation from Section 937-5 of Chapter 937.

5. City Council authorize the City Solicitor to introduce the necessary bills to give effect to City Council's decision and City Council authorize the City Solicitor to make any necessary clarifications, refinements, minor modifications, technical amendments, or by-law amendments as may be identified by the City Solicitor in order to give effect to the reasonable operation of sidewalk cafés, curb lane/parklet cafés or public parklets with areas denoted for physical distancing purposes as described in the report from the General Manager, Transportation Services, dated June 8, 2020.

6. 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 and that Notice for Public Meeting be given in accordance with the regulations of the Planning Act.

7. City Council authorize the General Manager, Transportation Services to negotiate and enter into a non-competitive agreement with Upper Canada Road Services Inc. in the amount of \$3,083,854 (net of HST recoveries) for the supply, delivery, installation, and warranty of pavement markings, signage, planters and other traffic dividers / public realm beautification elements, and traffic control associated with installation of the previously reported on ActiveTO initiative (which would include the CaféTO program) for the Destination Danforth project approved by Council on May 28, 2020 (CC21.20) until December 31, 2021, on terms and conditions satisfactory to the General Manager, Transportation Services and in a form satisfactory to the City Solicitor.

## **FINANCIAL IMPACT**

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Funding of approximately \$250,000 is required for traffic planning studies, equipment and other program costs which will be accommodated on a one-time basis within the 2020 Approved Operating Budget for Transportation Services.

Business Improvement Areas will be responsible for all costs associated with plantings and maintenance of café expansion areas. Economic Development & Culture will offer

grants equal to 50% of plant material and maintenance costs to a maximum of \$5,000 per BIA. A funding requirement of approximately \$250,000 is expected and will be accommodated on a one-time basis through adjustments to the 2020 Approved Operating Budget for Economic Development & Culture.

Revenue loss of \$775,000 estimated for waiving fees for existing licensed sidewalk café and parklet permit holders will be accommodated within the 2020 Approved Operating Budget for Municipal, Licensing & Standards.

It is also expected that due to parking space removals, there will also be a net negative operating impact to the Toronto Parking Authority, however, the scale of the potential revenue loss is unknown at this time. Transportation Services will work with the Toronto Parking Authority to minimize operating impacts wherever possible.

The cost to enter into a non-competitive agreement as recommended in this report is approximately \$3,083,854 (net of HST recoveries) to implement the previously reported on ActiveTO initiative for the Destination Danforth project, which would include the same terms for the CaféTO program as outlined within this report. As was already identified to Council on May 28, 2020 in CC21.20, funding is available in the approved 2020 - 2029 Capital Budget and Plan for Transportation Services.

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

## **DECISION HISTORY**

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At its meeting of March 27 and 28, 2019, City Council established a new harmonized bylaw and separate Toronto Municipal Code Chapter for sidewalk cafés, public parklets, and marketing displays.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2019.EC2.3>

At its meeting of May 28, 2020, City Council authorized the installation of a Complete Streets transformation including public realm improvements and cycling infrastructure on Danforth Avenue as part of the ActiveTO Cycling Network Expansion:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2020.CC21.20>

## **COMMENTS**

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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. Fairness, simplicity and innovation will be the pillars of a multi-faceted approach that seeks to support local restaurants and bars by expediting café permissions for the 2020

outdoor dining season. Transportation Services will coordinate this undertaking which will include curb lane closures, simplifying café placement guidelines, establishing public seating opportunities and a comprehensive education and enforcement plan. These temporary measures will provide immediate assistance to local businesses while also supporting the longer term goal of retaining main street vibrancy and character.

Given the number of restaurants and bars that will need assistance to augment their capacity and the momentum of reopening the economy, a key component of this plan involves pausing certain bylaw elements for the 2020 patio season to ensure that:

- Sidewalk and curb lane/parklet cafés can be installed expeditiously while protecting the safety of patrons and the general public;
- Fees can be waived;
- Patrons have access to outdoor seating while accessing restaurant and bar services; and
- General safety and accessibility requirements are met to ensure that sidewalk users have adequate space to travel.

Business Improvement Areas are a critical partner in the CaféTO plan. Site visits will be conducted with BIAs who will coordinate the needs of their membership along any given street, including other retail and service oriented businesses. BIAs will be encouraged to work collaboratively with the City on funding the maintenance of their closure areas. Restaurants and bars not located within a BIA area will have an equivalent opportunity to register for sidewalk and request curb lane/parklet café extensions.

A consultative experience with local Councillors will form part of the curb lane closure request process. Expedious decision making will be critical to the success of this program.

## **Program Parameters**

### **Pausing Permitting, Applications and Fees under Chapter 742**

In order to accelerate the ability for restaurant and bar operators to expand their current permitted sidewalk café area, or construct a new sidewalk or curb lane/parklet café area in the public right-of-way, staff are recommending that the current application, and permitting process must be paused.

Business operators with an active licence for an "Eating Establishment" (commonly known as, and referred to in this report as "restaurants and bars") will be required to complete a simple registration process on the City's website with information about their café installation plans. The registration process will require comprehensive insurance coverage with the City of Toronto as a named additional insured on their policy which is consistent with what is required under Chapter 742. All registrants will also be required to release and indemnify the City of Toronto from all claims.

Staff in Transportation Services and MLS will review registrant submissions and communicate with eligible restaurant and bar owners that they are permitted to expand or install a café for the 2020 season. Should a business owner be located within a City

of Toronto Business Improvement Area (BIA), they will be instructed to contact their BIA Coordinator for feedback on their proposal which will be provided to the City as part of the registration process.

### **Curb Lane Closures for Public Dining**

In order to provide additional public space for cafés, Transportation Services will facilitate the closure of the curb lane where possible. Safety and accessibility for patrons and pedestrians will be the first consideration in approving these closures. Curb lanes will be closed in consultation with the local Councillor, as required. Existing parklet café permit holders will be permitted to reinstall their parklet café for the 2020 café season but no new parklet permits will be granted for the 2020 season through the typical Chapter 742 process while the temporary CaféTO program is in place.

Curb lane closures are envisioned to have a balance of uses to ensure that all businesses and residents have an opportunity to benefit from the additional public space created through this process. In addition to curb lane/parklet café opportunities, space will continue to be provided for temporary parking for quick curbside pick-ups, spaces to queue retail customers and restaurant and bar patrons, areas to ensure expedient waste collection and the potential for BikeShare stations, where warranted. Public parklets installed by Transportation Services will also be a critical element of streetscape curb lane closures and will be installed to supplement space available to all eating establishments for the public to enjoy.

Certain streetscape conditions will limit the ability to accommodate curb lane closures for parklet cafés in every requested location. A list of constraints will be provided to potential café operators prior to the registration process which include but are not limited to, proximity to cycling infrastructure, public transit stops, fire hydrants and other critical traffic safety requirements.

#### *Destination Danforth*

On May 28, 2020, City Council approved a Complete Streets transformation of Danforth Ave corridor, for installation as soon as possible as part of the City's Recovery & Rebuild Strategy. This project represents approximately 6 kilometres of rapid arterial roadway transformation, as well as delivery of the CaféTO program along this corridor (under the same terms as outlined within this report), unanticipated in any current Transportation Service contract. To accomplish this project within the timeline to support local business recovery and TTC capacity relief, authorization of a non-competitive agreement is required.

Existing contracts for pavement markings / signage, planters and other traffic dividers / public realm beautification elements, and traffic control required for this installation are fully committed with other 2020 Transportation Services Capital Works program delivery, including other ActiveTO projects, and cannot be used to deliver the Destination Danforth project in the required timeframe this summer.

In 2019, 19CW-400PM pavement marking contract (part of RFQ No. 2021198607) was issued to deliver pavement markings for all 2020 cycling infrastructure projects within the Transportation Services Capital Works program. Upper Canada Road Services Inc.

was the second lowest bidder in that procurement process. A non-competitive purchase order with Upper Canada Road Services Inc. would be at the same unit rates for pavement marking items, as competitively bid through that process in 2019.

Upper Canada Road Services Inc. is based in the Greater Toronto Area and is an Ontario-based manufacturer of durable pavement marking. This vendor has experience in successfully delivering similar projects for Transportation Services, including the Bloor Street Bike Lane Pilot project. As such, this contract would support the recovery of the GTA and Ontario economy, and continue to ensure a diverse, and competitive vendor market and supply chain.

### **Define Essential Café Placement Guidelines**

Consultation with BIAs, restaurant industry associations and individual restaurant and bar operators has resulted in a clear request for the City to provide easy to understand and implementable guidelines that details the minimum requirements that must be adhered to when installing or expanding a temporary sidewalk or curb lane/parklet café in the public right-of-way. Staff will support this request by developing a guidebook that streamlines the critical installation, accessibility and health and safety requirements noted in Chapter 742, Sidewalk Cafés, Parklets and Marketing Displays as well as additional provisions and prohibitions specific to the 2020 café season. This guidebook will complement Toronto Public Health's guidelines for re-opening restaurants and patios.

### **Education and Enforcement of Café Guidelines**

Thoughtful support for local businesses is an essential element in the CaféTO plan. Staff will launch an education and public safety campaign that encourages ongoing voluntary compliance with the streamlined café placement guidelines.

In order to ensure compliance, MLS bylaw officers will act on a complaint-driven basis to investigate requests received through 311 and Transportation Services bylaw officers will conduct proactive investigations of expanded sidewalk and curb lane/parklet cafés throughout the café season.

The guidelines will state that the City of Toronto reserves the right to remove any café or parklet in the right-of-way that does not meet the minimum criteria noted in the guidebook or where café operators violate the guidelines and public health and safety conditions. The current provisions with respect to enforcement in Article 14 of Chapter 742 will continue to apply.

### **Program Costs**

It is anticipated that the City's cost associated with the implementation of the CaféTO program is in the order of \$500,000, which includes but is not limited to traffic engineering studies for curb lane closures and purchasing equipment for closures and public parklet areas. Unfortunately, with the rapid changes experienced by the restaurant industry, staff are unable to accurately estimate the number of restaurants and bars that may be interested in participating in a program that supports café extensions based on the number of current or past restaurant and bar license holders.

Staff intend to provide a report to Council at the end of the café season with a full accounting of the program uptake and all associated costs.

Transportation Services will provide a limited curb lane closure material choices to BIAs, including decorative planters and standard traffic control barriers. If decorative planters are chosen as an equipment type, BIAs will be responsible for all costs associated with soil, planting and maintaining planters in their curb lane closure areas. The City will not be responsible for planting, watering, maintaining or replacing plant material in any decorative planters that delineate curb lane closure areas. Economic Development & Culture will offer grants equal to 50% of plant material and maintenance costs to a maximum of \$5,000 per BIA. The anticipated costs of this grant program are \$250,000 and can be accommodated on a one-time basis within the 2020 Approved Economic Development & Culture Operating Budget.

Individual restaurants outside of BIA areas that qualify for a curb lane/parklet café will be provided with basic curb lane closure equipment. They will be responsible for any costs related to fencing requirements, furniture and any upgrades and maintenance responsibilities to more decorative curb lane closure materials they wish to install.

Revenue loss of \$775,000 estimated for waiving fees for existing licensed sidewalk café and parklet permit holders will be accommodated within the 2020 Approved Operating Budget for Municipal, Licensing & Standards.

There will also be an operating impact for the loss of Pay-and-Display parking revenues for the Toronto Parking Authority. Transportation Services will work closely with the Toronto Parking Authority to minimize impacts, wherever possible.

Staff are acutely aware of the financial hardships faced by the restaurant industry as a result of the COVID-19 pandemic and staff recommend that fees for the 2020 Café season be waived. Existing permit holders that have already paid their fees for 2020 will have those fees applied to the next renewal period.

### **Patios on Private Property**

The CaféTO program addresses outdoor patios located on City-owned property. Some bars, restaurants and cafés provide their patrons with outdoor patios located on private property which are regulated by the Zoning By-law.

The harmonized city-wide Zoning By-law 569-2013 permits outdoor patios associated with eating establishments and take out eating establishments in the following zones in the Commercial and Employment zone categories:

- CR (Commercial Residential)
- CRE (Commercial Residential Employment)
- EL (Employment Light Industrial)
- E (Employment Industrial)
- EO (Employment Industrial Office)

The Zoning By-law also permits outdoor patios in certain Open Space zones that permit eating establishments.



Where outdoor patios are permitted, Zoning By-law 569-2013 requires that various conditions are met in order to manage the potential impacts of noise and nuisance on nearby properties and to ensure that the patios remain ancillary to the indoor space of its associated establishment. Regulations generally limit the size of outdoor patios, require minimum setbacks from nearby properties in Residential zones, and prohibit entertainment such as performances, music and dancing. In the various zones in the Employment category, outdoor patios may not occupy more than 20% of the front yard of the property.

The former municipal zoning by-laws also include various regulations respecting outdoor patios associated with eating establishments. Those regulations continue to govern properties that remain subject to one of the former zoning by-laws.

It would be consistent with the proposed CaféTO program to enable expanded outdoor patios associated with eating establishments and take-out eating establishments in front of buildings on private property on a temporary basis. In particular, opportunities for expanded patios may exist where parking areas are generally located in front of buildings. To control potential nuisance, such patios should otherwise meet zoning regulations respecting their setback from adjacent nearby properties, their overall size, and prohibition on entertainment.

A temporary use by-law pursuant to Section 39 of the Planning Act is a tool that can be used to ease zoning restrictions for outdoor patios on a temporary basis, with an explicit expiry date, to complement the CaféTO program. Such a by-law will also need to provide temporary relief from parking requirements, in order to enable eating establishments to use a parking area as an outdoor patio. This report recommends that City Council direct the Chief Planner to bring forward a temporary use zoning by-law that reflects these objectives to the July meeting of the Planning and Housing Committee for a statutory public meeting under the Planning Act. Due to time constraints associated with the summer patio season, a consultation program on the temporary use by-law is not proposed. Web-based information will be provided in lieu of normal consultation.

### **AGCO Regulations**

At the time of the submission of this report, the Alcohol and Gaming Commission of Ontario (AGCO) has not yet announced any changes to the current process of liquor license extensions or approvals. Should any further Council authorities be required in this matter they will be the subject of a Supplementary Report to Council.

### **Delegated Authority**

The recommendations in this report authorize the General Manager, Transportation Services, to temporarily close to vehicular traffic the curb lanes or any portion thereof on any highway (with the exception of those highways listed in section 937-4) for a period up to and including 138 consecutive days from July 1, 2020 to November 15, 2020 for the purpose of permitting a curb lane/parklet café or public parklet approved by the General Manager, Transportation Services under the program described in this report.

The exercise of delegated authority for closures is not subject to notification to the Ward Councillor under Chapter 937, nevertheless, the process will involve consultation with

local Councillors. The road closures will also not go to Community Councils as they are an exception from the general delegation of temporary road closures to Community Councils under Chapter 27, Council Procedures.

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## **SIGNATURE**

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