



REPORT FOR ACTION

229 Richmond Street West – Zoning Amendment Application and Licence Extension and Amending Agreement – Final Report

Date: July 24, 2020

To: City Council

From: Chief Planner and Executive Director, City Planning
Executive Director, Corporate Real Estate Management

Ward: Ward 10, Spadina-Fort York

Planning Application Number: 20 170504 STE 10 OZ

SUMMARY

This report recommends: 1) a temporary use by-law pursuant to Section 39 of the Planning Act pertaining to the city-owned site at 229 Richmond Street West to permit outdoor patios for eating establishments located on a lot within the area bounded by Richmond Street West on the north, Duncan Street on the east, Nelson Street on the south and John Street on the west; and 2) the City enter into a licence extension and amending agreement with the abutting business owners to extend the licence term and waive the licence fee as set out in the licence agreement between the City and the abutting business owners dated July 17, 2020.

1) Temporary Use By-Law

The proposed temporary use by-law complements the CaféTO program which allows expanded patios on City boulevards and rights-of-way, approved by City Council on June 29, 2020.

As well, a Ministerial Zoning Order, Ontario Regulation 358/20, was filed on July 8, 2020, permitting outdoor patios to be used in combination with an eating establishment on any lot in the City of Toronto where eating establishments are permitted. The outdoor patio however must be located on the same lot as the eating establishment with which it is associated. The Ministerial Zoning Order cannot be appealed and will be revoked on November 16, 2020, coinciding with the end of the CaféTO program. The goal of both of these initiatives is to support local eating establishments as they re-open following closures resulting from COVID-19.

Further, a provincial Regulation under the Emergency Management and Civil Protection Act (EMCPA) amends S. 39 of the Planning Act by removing notice requirements and appeal rights to temporary use by-laws that authorize outdoor patios associated with eating establishments.

The proposed site-specific temporary use by-law at 229 Richmond Street West complements the CaféTO program and the Ministerial Order in supporting the ability of nearby eating establishments to respond to physical distancing requirements associated with the COVID-19 pandemic, by increasing the amount of outdoor space for patrons.

The by-law would allow an outdoor patio, with restrictions, to be provided at 229 Richmond Street West in conjunction with nearby restaurants and bars which themselves are not located on the subject site. The temporary use by-law is proposed as a site-specific amendment to the city-wide harmonized Zoning By-law (569-2013) and also to the former City of Toronto By-law (438-86). The by-law is proposed to expire on November 16, 2020, to coincide with the end of the CaféTO program and the Ministerial Zoning Order. As well, under the EMCPA Regulation, notice of this by-law is not required, nor can it be appealed.

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

2) Licence Extension and Amending Agreement

Due to the immediate needs of the abutting restaurant owners, 2249487 Ontario Limited (o/a The Ballroom) and Easy & The Fifth Inc. (the "Licensee"), the City of Toronto entered into a licence agreement dated July 17, 2020 with each Licensee for a licence term of fourteen (14) days at fair market value (the "Licence Agreement") with the support from the Mayor's office, the local Business Improvement Area and the Alcohol and Gaming Commission of Ontario, under Corporate Real Estate Management's ("CREM") delegated authority, DAF No. 2020-202 and DAF No. 202-203. The intention was to permit the Licensees to operate their business as soon as possible using outdoor patios while CREM subsequently sought Council authority for an extension of the licence term until November 16, 2020 and waiver of the licence fee in the amount of \$5,450 + HST (per licence) in order to align the City's arrangement with the Licensees with the CaféTO program and Council's previous decisions to support the reopening of local eating establishments following closures resulting from the COVID-19 pandemic.

RECOMMENDATIONS

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

1. City Council enact zoning by-law amendment substantially in accordance with Attachment 2 to the July 24, 2020 report from the Chief Planner and Executive Director, City Planning
2. City Council authorize the City Solicitor to make such stylistic and technical changes to the zoning by-law amendment as may be required.

The Executive Director, Corporate Real Estate Management, recommends that:

3. City Council authorize the Director, Real Estate Services, to extend and amend the Licence Agreement between the City of Toronto and 2249487 Ontario Limited (o/a The Ballroom) and Easy & The Fifth Inc. (collectively, the "Licensees") to extend the licence term until November 16, 2020 and waive the licence fee as set out in the Licence Agreement thereby granting a nominal sum licence to the Licensees, and including such other terms as deemed appropriate by the Director, Real Estate Services, or their designate from time to time, and in a form satisfactory to the City Solicitor.

4. City Council authorize the Director, Real Estate Services, to execute and deliver any amendments to the Licence Agreement on behalf of the City.

5. City Council authorize the Director, Real Estate Services, or their designate, to administer and manage the Licence Agreement and amendments, including the provision of any consents, approvals, waivers, notices, and notices of termination, provided that the Director, Real Estate Services, may, at any time, refer consideration of such matters to City Council for its determination and direction.

FINANCIAL IMPACT

The City Planning Division and Corporate Real Estate Management 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

CaféTO Program

A report titled "CaféTO - Increasing Outdoor Dining Space for Toronto Restaurants and Bars" was City Council adopted on June 29, 2020. The report provided 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 CaféTO 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 can be viewed at: <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2020.EX14.1>

Ministerial Zoning Order, Ontario Regulation 358/20

On July 8, 2020, the Ministry of Municipal Affairs and Housing filed Ontario Regulation 358/20, a Ministerial Zoning Order under the Planning Act, which cannot be appealed and is to be revoked on November 16, 2020. This Order has a number of effects including permitting outdoor patios to be used in combination with an eating establishment on any lot in the City of Toronto where eating establishments are

permitted. The outdoor patio must be located on the same lot as the eating establishment with which it is associated. The Order also provides relief from certain zoning restrictions, including permission to occupy space that would otherwise be required for parking and an increase to the permitted maximum area of outdoor patios.

PROPOSAL

Staff are proposing a temporary use by-law to allow outdoor patios associated with eating establishments located on lots within the area bounded by Richmond Street West on the north, Duncan Street on the east, Nelson Street on the south and John Street on the west, to be located off-site at 229 Richmond Street West.

The site at 229 Richmond Street West is currently owned by the City of Toronto. It was previously utilized as a public parking lot prior to the City purchasing it in January 2020, but was not able to be used as a parking lot during the pandemic due to operational limitations. It is currently vacant and fenced off with no anticipated permanent uses for the near foreseeable future. This vacant site is temporarily proposed to accommodate the proposed outdoor patios.

Ministerial Zoning Order O.Reg 358/20 permits outdoor patios to be used in combination with an eating establishment on any lot in the City of Toronto where eating establishments are permitted. The outdoor patio must be located on the same lot as the eating establishment with which it is associated.

The site at 229 Richmond Street West is located in the Residential Zone (CRE) where eating establishments are permitted. However, as per the Ministerial Order, any outdoor patios associated with an eating establishment in the CRE zone must be located on the same lot as the eating establishment.

The site-specific temporary use by-law would make amendments to the city-wide harmonized Zoning By-law (569-2013) and also to the former City of Toronto By-law (438-86) as they pertain to the site at 229 Richmond Street West, so as to allow eating establishments not located at 229 Richmond Street West to utilize this vacant site for an outdoor patio.

The temporary use by-law would be subject to restrictions prohibiting uses such as a dance floor and live music and requiring setbacks from Richmond Street West and Nelson Street to keep any patron queuing off the adjacent public sidewalk.

The proposed by-law specifies an expiration date (November 16, 2020) which coincides with the proposed conclusion of the CaféTO program and the Ministerial Order. On that date, the current zoning restrictions on outdoor patios would resume.

APPLICATION BACKGROUND

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.

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.

Eating establishments are permitted in the CRE zone where the subject site at 229 Richmond Street West is located. The subject site is an underutilized property currently occupied by a vacant surface parking lot not operationally in use in the Entertainment District of the King-Spadina neighbourhood. The Entertainment District contains a high concentration of eating establishments which are currently unable to meet their standard patron capacity targets due to social distancing requirements of the COVID-19 pandemic.

The proposed temporary use by-law conforms to the Official Plan by supporting an important economic sector on a temporary basis consistent with the requirements of the Ministerial Zoning Order and the CaféTO program. As the temporary use by-law is site-specific and is in an area of the City where eating establishments commonly have large

interior spaces, the temporary use by-law will not restrict the permitted size of the outdoor patios.

The proposed outdoor patios will also be subject to a license which will address the more detailed operating considerations such as hours of operation and patron capacity.

Conclusion

City Planning staff are recommending a temporary use by-law to allow outdoor patios associated with eating establishments located on lots within the area bounded by Richmond Street West on the north, Duncan Street on the east, Nelson Street on the south and John Street on the west, to be located off-site at 229 Richmond Street West. The by-law complements the CaféTO program as well as the Ministerial Zoning Order Ontario Regulation 358/20 by providing an opportunity for eating establishments to create temporary patios on a nearby site, thereby shifting their capacity from indoor space to outdoor patios, as they adjust to physical distancing requirements related to the COVID-19 pandemic. The temporary use by-law would expire on November 16, 2020.

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SIGNATURE

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City Planning

Patrick Matozzo,
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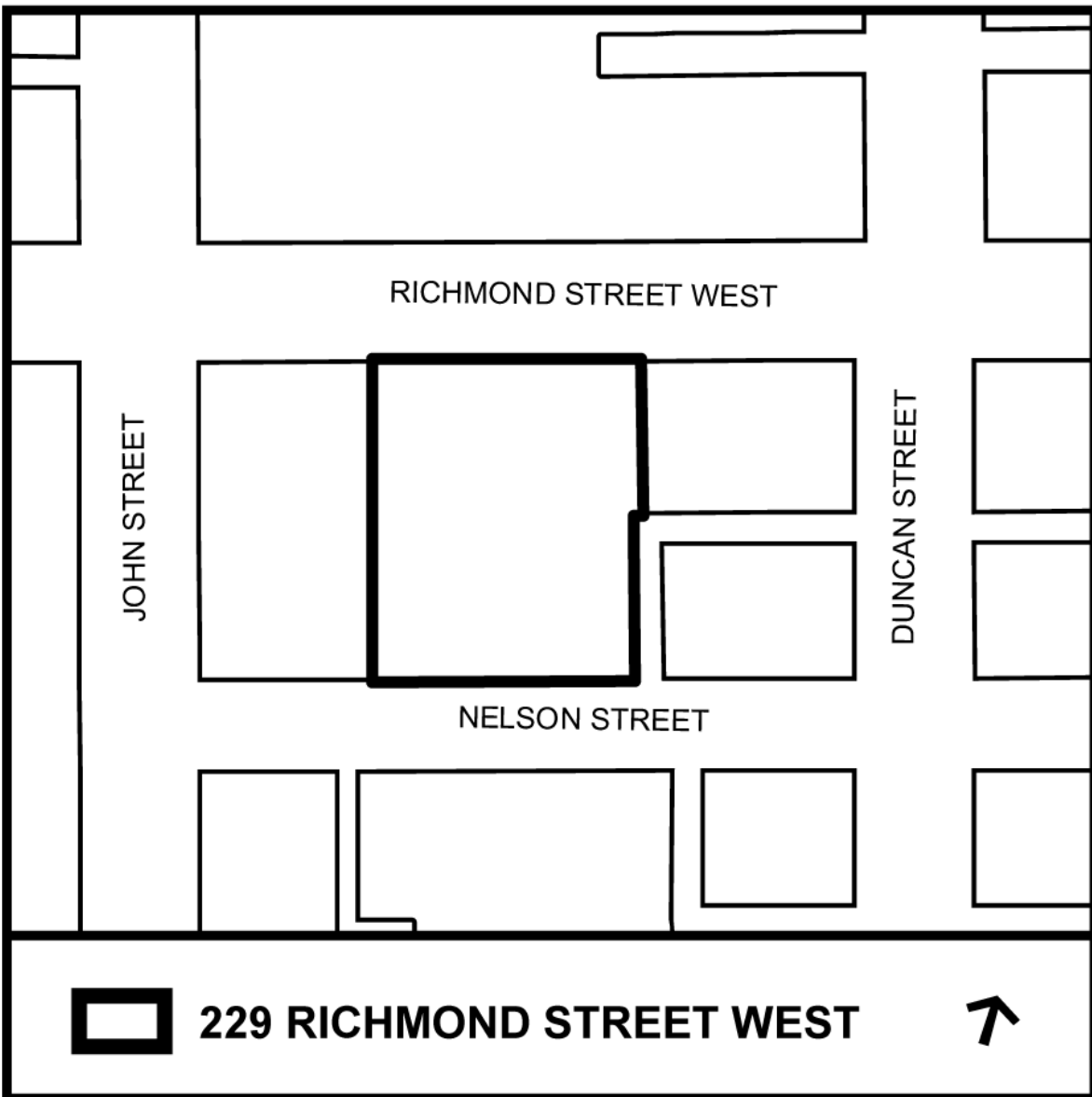
ATTACHMENTS

City of Toronto Data/Drawings

Attachment 1: Location Map

Attachment 2: Draft Zoning By-law

Attachment 1: Location Map



Attachment 2: Draft Zoning By-law Amendment

Submitted as a separate attachment