



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

Date: October 5, 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 will replace the Ministerial Zoning Order issued by the Province as O. Reg. 358/20, which will expire on November 16, 2020. The temporary use by-laws will continue to ease restrictions on outdoor patios associated with restaurants and bars during the winter months, in the event that individual businesses choose to operate patios for their patrons during this time.

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 temporary use by-laws are proposed to expire on May 25, 2021, after the conclusion of next year's Victoria Day long weekend.

This report also recommends time extensions to three site-specific temporary use by-laws previously adopted by Council that grant zoning permissions to three temporary outdoor patios currently operating under circumstances or site conditions as part.

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 enact zoning by-law amendments substantially in accordance with Attachments 3, 4, and 5.
3. City Council authorize the City Solicitor to make such stylistic and technical changes to each zoning by-law amendment as may be required.

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

City Council on June 29 and 30, 2020 requested the Minister of Municipal Affairs and Housing to provide, as quickly as possible, expanded permission for patios on private properties in Toronto to improve the economic health of the City of Toronto so that such permissions achieve the following objectives, and which shall be in effect until November 16, 2020:

- a. permitting surface outdoor patios in certain zones which permit eating establishments but not outdoor patios, subject to conditions to mitigate impact on nearby properties;
- b. 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 which require a setback from the front lot line;
- c. allowing an outdoor patio to occupy space that would otherwise be required for parking; and,
- d. increasing the permitted maximum area of surface outdoor patios ancillary to eating establishments, take-out eating establishments and recreations uses from the greater of 30 square metres or 30 percent of the interior floor area, to the greater of 50 square metres or 50 percent of the interior floor area.

The City Council Decision can be found here:

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

On July 2, 2020, the Province of Ontario issued Ontario Regulation 345/20, which exempts a by-law that would authorize the temporary use of land for a restaurant or bar patio under Section 39 of the Planning Act from subsections 34 (12) to (14.3), (14.5) to (15) and (19) of that Act and paragraphs 4 and 5 of subsection 6 (9) of Ontario Regulation 545/06. The effect of this regulation is that City Council may adopt a

temporary use by-law respecting a restaurant or bar patio without holding a statutory public meeting under the Planning Act and that such a by-law is not subject to appeal.

On July 8, 2020, the Province of Ontario issued Ontario Regulation 358/20, being Ministerial Zoning Order to expand zoning permissions for outdoor patios in the City of Toronto, generally consistent with the June 29 and 30, 2020 request of City Council. The regulation expires on November 16, 2020.

At its meeting on July 28, 2020, City Council adopted a Final Report pertaining to the City-owned site at 229 Richmond Street West, recommending the following: 1) a temporary use by-law pursuant to Section 39 of the Planning Act 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 (By-law 667-2020); 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. The City Council decision can be found here:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2020.MM23.27>

At its meeting on July 28, 2020, City Council adopted a Final Report pertaining to the site at 1012-1018 Gerrard Street East. The report recommended a temporary use by-law (By-law 668-2020) pursuant to Section 39 of the Planning Act to permit an outdoor patio across the subject site for the benefit of the eating establishments located on a nearby portion of Gerrard Street East. The City Council decision can be found here:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2020.MM23.34>

At its meeting on July 28, 2020, City Council adopted a Final Report pertaining to the site at 95-107 Danforth Avenue and 749 Broadview Avenue. The report recommended a temporary use by-law (By-law 669-2020) pursuant to Section 39 of the Planning Act to permit an outdoor patio across the subject site for the benefit of the eating establishment located at 107 Danforth Avenue. The City Council decision can be found here: <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2020.MM23.35>

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 recreation uses. The proposed by-law specifies an expiration date (May 25, 2021) which comes immediately after the Victoria Day weekend of 2021.

The proposed temporary use by-laws mirror the Ministerial Zoning Order (MZO) 358/20 that will expire on November 16, 2020. The effect of the temporary use by-laws will be

to continue the permissions for outdoor patios provided by the MZO through the winter months and into the spring. This will ensure that zoning regulations do not prevent outdoor patios that have operated under the permissions of the MZO from continuing to operate through the winter months and into the spring.

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.)

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 maintain current opportunities for outdoor patios by easing restrictions that are included in the City's zoning by-laws and mirroring the MZO that is currently in place. This includes a moderate increase to the permitted size of outdoor patios, recognizing many restaurants and bars 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.

Staff are further proposing amendments that would extend the expiry of three site-specific temporary use by-laws previously adopted by City Council. The three patios currently operate at the following addresses: 229 Richmond Street West; 1012-1018 Gerrard Street East; and 95-107 Danforth Avenue and 749 Broadview Avenue. The temporary zoning permissions for these patios will expire on November 16, 2020, unless extended by Council through new by-laws. No other changes are proposed to the restrictions in these site-specific temporary use by-laws.

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).

As described below, a number of zoning regulations respecting outdoor patios have been eased since July 2020 as a result of an MZO.

Ontario Regulation (Ministerial Zoning Order) 358/20

Ontario Regulation 358/20 was issued by the Province at the request of City Council. The MZO eased zoning restrictions on outdoor patios in order to support restaurants and bars to respond physical distancing requirements while their indoor capacity was limited. The MZO complemented the CafeTO program, which created opportunities for outdoor patios on public property and which will conclude on November 16, 2020.

As Council requested, the effect of the MZO was to:

- permit surface outdoor patios in certain zones where they would otherwise not be permitted;
- remove 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 which require a setback from the front lot line;
- allow an outdoor patio to occupy space that would otherwise be required for parking; and;
- increase the permitted maximum area of surface outdoor patios.

A number of restaurants and bars in the City have taken advantage of these temporary permissions as they manage the impact of COVID-19. These operators were not required to register with the CafeTO program as they were not accessing public space. City staff are currently surveying the BIAs, with questions related to both public and private patios, as part of the overall program evaluation and the results will be included in a report for Council in early 2021.

Ontario Regulation 345/20

Ontario Regulation 345/20, made under the Emergency Management and Civil Protection Act, R.S.O. 1990, exempts City Council from Planning Act requirements related to the adoption of temporary use by-laws respecting a restaurant or bar patio. Council may pass such a by-law without holding a statutory public meeting and the by-law is not subject to appeal. The purpose of the regulation is to enable municipalities in Ontario to provide permissions for outdoor patios on a temporary basis as part of the response to the impact of COVID-19 on restaurants, bars, and cafes.

Site-Specific Temporary Use By-laws

In July 2020, Council adopted three site-specific temporary use zoning by-laws that permit outdoor patios that would not have otherwise been permitted by the City's zoning by-laws nor by the MZO:

- By-law 667-2020 permits an outdoor patio at 229 Richmond Street West, which would otherwise not be permitted because the eating establishments which operate the patio are not located on the same property.
- By-law 668-2020 permits an outdoor patio at 95-107 Danforth Avenue and 749 Broadview Avenue, which does not otherwise comply with the setback requirement from nearby properties in a residential zone.
- By-law 669-2020 permits an outdoor patio at 1012-1018 Gerrard Street East, which would otherwise not be permitted because the eating establishments which operate the patio are not located on the same property.

All three of these site-specific by-laws will expire on November 16, 2020, coinciding with the expiry of the MZO and the CafeTO program. City Planning staff have been in communication with the patio operators, who have requested that the expiry dates be extended.

COMMENTS

Interest in Winter Patios

Staff from across a number of divisions have received inquiries from operators of bars and restaurants who are considering operating patios during winter months. The MZO which expands permissions for outdoor patios in Toronto will expire on November 16, 2020. Many of these bars and restaurants will require similar zoning permissions to continue in order to maintain the outdoor patios that they have established in response to COVID-19.

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

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.

Not every property or eating establishment will be able to provide a patio on private property. Furthermore, restaurants, bars, and cafes may face many challenges to operate a patio in winter months, including cold weather, Building Code requirements associated with temporary enclosures, Toronto Public Health requirements on enclosures and air circulation, fire safety associated with heat sources, and the need to maintain physical distancing for patrons. The proposed temporary use by-laws will maintain zoning permissions for outdoor patios that are currently in place, but they are not intended to address these other challenges. Any structures or enclosures for

weather protection will be subject to applicable Building Code and zoning regulations.

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); and,
- 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 requirements 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.

CONTACT

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SIGNATURE

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ATTACHMENTS

- Attachment 1: Draft Temporary Use By-law (By-law 569-2013)
- Attachment 2: Draft Temporary Use By-law (former municipal zoning by-laws)
- Attachment 3: Draft Temporary Use By-law (229 Richmond Street West)
- Attachment 4: Draft Temporary Use By-law (95-107 Danforth Avenue and 749 Broadview Avenue)
- Attachment 5: Draft Temporary Use By-law (1012–1018 Gerrard Street East)