

## **CaféTO 2022 and Beyond**

Date: October 13, 2021

To: Executive Committee

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

Wards: All

### **SUMMARY**

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The CaféTO program was launched in June 2020 to support restaurants and bars facing indoor dining capacity restrictions by providing expanded outdoor dining space on the street and sidewalk. CaféTO was extended into 2021 and saw a 51% higher uptake compared to 2020, with over 1,200 restaurants participating. City Council also approved a temporary use zoning by-law which granted permission to restaurants to expand an outdoor dining space on private property without a requirement for an application with the City.

COVID-19 has had a significant impact on business owners and employees in the hospitality industry and it is expected that several years will be required before a full economic recovery from the pandemic is realized. This, coupled with the widespread support received for the program, indicates that there is a demand to make CaféTO permanent, which is the proposed direction for this program.

Making the program permanent requires a phased approach, beginning with simplifying the process to obtain a permanent sidewalk café permit. Curb lane/parklet cafés will be permitted city-wide through the CaféTO program in 2022 and staff will monitor the impact of curb lane closures to recommend location and design criteria for a permanent curb lane café permit program in 2023. This work is essential to ensure CaféTO aligns with other critical Council-approved policy objectives like surface transit prioritization, freight, goods and curbside management, cycling infrastructure, complete streets and overall streetscape and congestion management.

CaféTO is an important program to the hospitality industry which continues to recover from the effects of COVID-19. It also represents a transformational change in the way that we use and view our streets and sidewalks and has enhanced the vibrancy of our main streets and public realm - making the program permanent will capture the clear enthusiasm for a people-centric public realm in Toronto.

## RECOMMENDATIONS

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

1. City Council direct the General Manager, Transportation Services, the Executive Director, Municipal Licensing and Standards and the General Manager, Economic Development and Culture to report back to the Executive Committee by Q1 2023 to establish criteria for a permanent program of CaféTO curb lane/parklet cafés, which takes into consideration the following:
  - a. The impact of curb lane/parklet cafés on vehicle congestion and transit, including Wheel-Trans;
  - b. The impact of curb lane/parklet cafés on on-street parking, pay and display parking, residential permit parking and designated accessible parking;
  - c. The impact of curb lane/parklet cafés on freight and goods movement and delivery and commercial loading zones;
  - d. The impact of curb lane/parklet cafés on road user safety and requirements for emergency services;
  - e. The impact of curb lane/parklet cafés on road maintenance and capital work and coordination
  - f. Requirements to ensure that curb lane/parklet café spaces are accessible;
  - g. A review of the fee structure for all café types; and
  - h. Any necessary modifications to Chapter 742, Sidewalk Cafés, Parklets and Marketing Displays required to implement the program.
2. City Council authorize the General Manager, Transportation Services, in consultation with the Executive Director, Municipal Licensing and Standards, to establish a program for the review, approval and installation of curb lane/parklet cafés or public parklets without applicants having to comply with certain requirements of Municipal Code Chapter 742, Sidewalk Cafés, Parklets and Marketing Displays, from May 1, 2022 until November 7, 2022.
3. In establishing a program under Part 2 above, City Council direct that the General Manager, Transportation Services and/or the Executive Director, Municipal Licensing and Standards, shall consider:
  - a. which requirements from Municipal Code Chapter 742, Sidewalk Cafés, Parklets and Marketing Displays should apply to curb lane/parklet cafés or public parklets under the program;
  - b. appropriate guidelines for the General Manager, Transportation Services and/or the Executive Director, Municipal Licensing and Standards to review and approve the curb lane/parklet cafés or public parklets under the program;

c. appropriate indemnification and insurance requirements to protect the City provided that the insurance requirement for the program requires at least \$2,000,000 in commercial general liability coverage;

d. advice from the Medical Officer of Health to ensure the health and safety of all persons using the curb lane/parklet cafés or public parklets under the program; and

e. requirements for the location, materials, usage, maintenance and removal of the curb lane/parklet cafés or public parklets under the program to ensure the health and safety of all users of City highways, including:

i. that a café or parklet on a local road be closed and cleared of customers by 11:00 p.m. unless hours of operation have been imposed previously by a Community Council for an existing café or parklet area, in which case both the existing and the extended café or parklet area be operated in accordance with the Community Council-imposed hours;

ii. where conditions other than hours of operation have been imposed previously by Community Council for an existing café or parklet area, that both the existing and the extended café or parklet area must be operated in accordance with the Community Council-imposed conditions; and

iii. where conditions have been imposed by Community Council on sidewalk cafés, curb lane/parklet cafés or public parklets in similar circumstances, that those Community Council-imposed conditions should apply.

4. City Council authorize the General Manager, Transportation Services and/or Executive Director, Municipal Licensing and Standards to approve applications to install and maintain curb lane/parklet cafés or public parklets where the application complies with the program adopted by the General Manager, Transportation Services, under Part 2 above, and where the approval conflicts with Municipal Code Chapter 742, Sidewalk Cafés, Parklets and Marketing Displays, the approval of the General Manager, Transportation Services and/or Executive Director, Municipal Licensing and Standards shall prevail to the extent of the conflict.

5. City Council waive application, transfer and permit fees required under Municipal Code Chapter 742, Sidewalk Cafés, Parklets and Marketing Displays, and Municipal Code Chapter 441, Fees and Charges, for any application, transfer or permit for a sidewalk café, curb lane/parklet café or public parklet received in the 2022 calendar year.

6. City Council amend section 937-3.13 of City of Toronto Municipal Code Chapter 937, Temporary Closing of Highways, to:

(a) delete the phrase "180 consecutive days" and insert the phrase "214 consecutive days";

(b) delete the phrase "issued a permit under Chapter 742, Sidewalk Cafés, Parklets and Marketing Displays, or for a period up to and including 187 consecutive days where a 2020/22 café has been approved by the General Manager of Transportation Services

from no earlier than May 8, 2021 to no later than November 10, 2021, inclusive, under Chapter 742, Sidewalk Cafés, Parklets and Marketing Displays"; and

(c) insert the phrase "either issued a permit or granted an approval for that purpose by the General Manager, Transportation Services or Executive Director, Municipal Licensing and Standards, under Chapter 742, Sidewalk Cafés Parklets and Marketing Displays" after the phrase "where an applicant has been".

7. City Council authorize the General Manager, Transportation Services and/or Executive Director, Municipal Licensing and Standards when approving a curb lane/parklet café under the CaféTO program, to confirm that the City of Toronto does not object to the temporary physical extension of liquor sales under section 97 of regulation 719 under the Liquor Licence Act for that approved area and to withdraw this confirmation if the operator of a sidewalk café, curb lane/parklet café or public parklet, in the opinion of the General Manager, Transportation Services or the Executive Director, Municipal Licensing and Standards, subsequently fails to comply with the CaféTO program, applicable City By-laws or policies, or municipal or provincial orders.

8. City Council request the Chief Planner and Executive Director, City Planning report to the Planning and Housing Committee in Q1 2022 on whether to extend the City-wide Temporary Use Zoning By-laws that ease restrictions on outdoor patios on private property.

9. 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 to give effect to the reasonable operation of the sidewalk cafés, curb lane/parklet cafés or public parklets under the program as described in the report (October 13, 2021) from the General Manager, Transportation Services, Executive Director of Municipal Licensing and Standards and the Interim General Manager, Economic Development and Culture.

10. City Council authorize the General Manager, Parks, Forestry and Recreation, in consultation with the Executive Director, Municipal Licensing and Standards, to extend the CaféTO program (including the authority with respect to liquor sales, and the waiving of any applicable fees under Municipal Code Chapter 608, Parks) to allow for the review, approval, installation and maintenance of food and beverage patios operated by established restaurants and cafés immediately adjacent to, or located in, park spaces with hard surfacing from April 15, 2022 to April 14, 2023, inclusive, where the application complies with the program adopted by the General Manager, Parks, Forestry and Recreation, and where the approval conflicts with any provision of Municipal Code Chapter 608, Parks, the approval of the General Manager, Parks, Forestry and Recreation shall prevail to the extent of the conflict.

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

a. Delete sections 742-2.3, 742-3.2 A. (2) and 742-4.3 B. (2) to remove the process for notice and the authority for the Executive Director, Municipal Licensing and Standards

to refuse an application for a sidewalk café if the City receives multiple objections to the application from members of the public during the 21-day period of public notice.

b. Delete section 742-2.2 A. (2) to remove the requirement that an applicant must submit a letter signed by the owner of the adjoining property of the proposed sidewalk café, public parklet or marketing display indicating that the owner does not object to the application if the applicant is not the owner of the adjoining property.

c. Amend sections 742.9.4 A. and B. to add the words "or occupant" after the words "property owner" so that where a permit holder or applicant wishes to extend their permit area in front of an adjacent property, the Executive Director, Municipal Licensing and Standards will accept a letter from either the property owner or occupant of the adjacent property - and not just the property owner as currently worded - to consent to or revoke the consent for the use of the area in front of that adjacent property.

d. Add the following new subsections D and E to section 742-9.4:

D. Despite Subsection A, where an applicant or permit holder has sought to contact the adjacent property owner through reasonable methods and has not received a response, the Executive Director may allow a permit area for a marketing display or sidewalk café to extend across the front of that adjacent property, or across the curbside area or parking area of that adjacent property in the case of a parklet café, where an applicant or permit holder has provided the Executive Director with proof in a form satisfactory to the Executive Director of their efforts to contact the adjacent property owner.

E. Should the Executive Director receive a letter from the adjacent property owner or occupant objecting to a permit area extension granted under Subsection D, the Executive Director will amend the permit area to remove the portion of the permit area which extends across the front of that adjacent property, and the reduction in permit area will be effective as of 30 days after notice is provided to the permit holder.

e. Delete section 742-10.1 A. (1) to remove the condition that a permit area for a sidewalk café must require a minimum separation distance of 30 metres from the closest part of the permit area to the nearest lot in a Residential Zone Category or Residential Apartment Zone Category.

f. Delete section 742-10.1 A. (3) to remove the condition that a permit area for a sidewalk café must require a minimum separation of six metres from the closest part of the permit area to the extended boundary of a lot in a Residential Zone or Residential Apartment Zone Category on the opposite side of the street across from the proposed permit area.

g. Amend Section 742-10.7 by defining fencing to include delineating materials.

h. Amend Section 742-10.9 to require that propane heaters are installed and operated in conformity with the necessary specifications and regulations but remove the requirement that documentation be submitted to the City prior to their use so that the section now reads as follows:

## § 742-10.9. Portable propane heaters.

A. No permit holder shall install or operate a portable propane heater on a permit area unless:

(1) the permit area is for a frontage café, parklet café or public parklet; and

(2) the portable propane heater is:

(a) installed and operated in conformity with the manufacturer's instructions and specifications, including clearance from combustibles and secured to the permit area utilizing the manufacturer's listed parts;

(b) in compliance with the requirements as set out in Technical Standards and Safety Act, 2000 Ontario Regulation 211/01 Propane Storage and Handling or any successor regulation; and

(c) operated by persons who have completed a training course in the use of propane.

14. City Council direct City Staff to include funding request for the resources required to support CaféTO as part of the 2022 budget process for City Council consideration.

## **FINANCIAL IMPACT**

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### *Transportation Services Financial Impact*

Transportation Services is projecting to spend \$1,500,000 on CaféTO in 2022 on a traffic planning consultant, equipment and other operational requirements. Funding will be included for consideration in the 2022 Operating Budget submission for Transportation Services.

### *Economic Development and Culture Financial Impact*

The continuation of the CaféTO program will require temporary positions to support the program. Pending adoption of the relevant recommendations of this report, funding will be requested through the 2022 Operating Budget Submission for Economic Development and Culture. The BIA CafeTO Enhancement grants program for planter maintenance will continue in 2022 and has been included in the 2022 Operating Base Budget submission for Economic Development and Culture.

### *Municipal Licensing and Standards Financial Impact*

The permitting process for permanent sidewalk cafés under Chapter 742 is proposed to be resumed in 2022. To support economic recovery for Toronto's businesses, staff propose waiving all café application, transfer and permit fees in 2022. Staff estimate that the revenue loss associated with waiving these fees will be approximately \$1,200,000 in 2022.

This report also recommends the creation of two new temporary full-time equivalent (FTE) positions in Business Licensing and Regulatory Services, including one temporary Support Assistant B and one temporary Support Assistant C to manage approximately 250 applications that are expected once this process resumes. This estimate is based on the number of CaféTO participants who did not otherwise have a

sidewalk café permit. The cost of these positions, including salaries and benefits, is \$155,173.

Additional enforcement staff may be required in Municipal Licensing and Standards given the increasing number of complaints. Staff will continue to monitor these trends and will evaluate staffing needs in 2022.

The Chief Financial Officer and Treasurer has been advised of the financial impacts arising from the report to be considered along with other priorities in future budget processes.

## **DECISION HISTORY**

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City Council, at its meeting of March 27 and 28, 2019 adopted a harmonized by-law for sidewalk cafés, public parklets and marketing displays by establishing Toronto Municipal Code Chapter 742.

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

City Council, at its meeting of June 29 and 30, 2020 authorized the establishment of the CaféTO program, which facilitated expanded outdoor dining space in the public right-of-way. <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2020.EX14.1>

City Council, at its meeting of October 27, 28 and 30, 2020, approved an extension of the CaféTO program, for sidewalk frontage and curbside cafés only, until April 14, 2021 to accommodate for winter outdoor dining opportunities.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2020.EX17.7>

City Council, at its meeting of October 27, 28 and 30, 2020, adopted a temporary use zoning by-law to ease restrictions associated with eating establishments, take-out eating establishments and recreation uses to permit outdoor patios on private property, under certain conditions.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2020.PH17.12>

City Council, at its meeting of March 10, 2021, extended the temporary use zoning by-law to expire on April 14, 2022.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2021.PH21.7>

City Council, at its meeting of February 2, 3 and 5, 2021, approved an enhanced CaféTO program for expanded outdoor dining in the public right-of-way until April 14, 2022. <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2021.EX20.6>

City Council, at its meeting of June 8 and 9, 2021, approved a pilot project for amplified live performances by musicians on patios in the public right of way in Wards 9, 14 and 19. <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2021.MM34.51>

City Council, at its meeting of October 1 and 4, 2021, extended the amplified music on patios pilot project to include Ward 10.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2021.MM36.47>

City Council, at its meeting of October 1 and 4, 2021, approved a new Community Improvement Plan which established the Commercial and Industrial Property Improvement Program.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2021.PH26.1>

## COMMENTS

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Between March 11, 2020 and October 13, 2021, indoor dining was prohibited in Toronto for 411 days, or 69% of the time. At the time of this report, restaurants and bars continue to have indoor capacity restrictions. Total employment in Toronto's food services industry fell by 33% in 2020, and employment in the sector remains well below pre-COVID-19 levels. Pandemic related restrictions have deeply affected those who own, operate and work in the hospitality sector. The CaféTO program and the temporary use zoning by-law for outdoor dining on private property are an integral part of the City's response to assist restaurants and bars affected by COVID-19.

CaféTO also represents a significant shift in the look, feel and function of many of Toronto's main streets, increasing the vibrancy of our streetscapes and public realm and is a notable alteration in the way the City and its residents are using and experiencing the public right of way, including both curbside space and the sidewalk.

CaféTO was created as a quick-start program at the beginning of the pandemic and draws its direction from Chapter 742, Sidewalk Cafés, Parklets and Marketing Displays (heretofore referred to as "Chapter 742"). Chapter 742 was established in 2019 and contains essential safety and accessibility requirements that are critical to the success of the CaféTO program.

Based on feedback from operators and the public, there is strong support for the City to continue to offer a streamlined administrative process and an easy-to-understand annual Guidebook to support the understanding of program requirements. Restaurant operators also want to know whether the CaféTO program will be provided on an on-going basis so they can make informed business decisions about whether to participate in the program and invest in their patios. Operators have also indicated the need for financial assistance to offset the costs of participating in the CaféTO program, as their businesses continue to recover from the impacts of COVID-19.

It is proposed that CaféTO be established as a permanent program for the City of Toronto in a phased manner, with the streamlined sidewalk café application and permit process formalized permanently in 2022. The curb lane café (referred to in Chapter 742 as a Parklet Café) and public parklet program will be extended in 2022, during which time recommended criteria will be developed for a permanent program for curb lane cafés in 2023. Given the uncertainty of the on-going COVID-19 pandemic, this approach will provide the flexibility required to adapt the program to meet the changing needs of the industry through 2022 while studying the effects that CaféTO has on the use of the public right of way and the city as a whole.



## **CaféTO 2021 Participation**

Participation in this year's CaféTO program exceeded expectations with 1,213 restaurants enrolled in the program, a 51% increase from 2020. Sixty-nine Business Improvement Areas (BIAs) had at least one restaurant participating in CaféTO and 158 participating restaurants were located outside of BIAs.

Public parklets were installed as part of the CaféTO program to provide an increased amount of public space in café-saturated streetscapes. 39 BIAs participated in the public parklet program, with a total of 65 public parklets city-wide. Adirondack chairs and accessible picnic tables were furnished through the CaféTO program for 47 public parklets, and similar investments were made in 18 public parklets by local BIAs.

## **Consultation and Public Outreach**

In August 2021, staff launched a public survey about CaféTO to provide an opportunity to comment on the program. The survey was open for four weeks and 10,174 responses were received. Responses generally indicated wide spread support and approval of CaféTO, with 91% of respondents indicating they believe extended sidewalk and curb lane cafés should be allowed in the City even after the threat of COVID-19 has passed.

In contrast, 28% of public respondents indicated sometimes or often having a problem as either a pedestrian, cyclist or motorist travelling near a café on the street or sidewalk. The most frequently reported problems were related to sidewalk crowding, furniture and equipment extending too far into the cycling lanes and traffic delays caused by the closure areas. Refer to Attachment 1 for a summary of the CaféTO public survey results.

In September 2021, staff launched a survey targeted to members of the accessibility community to gather their direct feedback about CaféTO in response to concerns raised about barriers and access following the 2020 program. 49% of respondents indicated that CaféTO created a barrier for them as they travelled on the sidewalk, including overcrowding and a lack of white-cane detectability and 39% of respondents felt CaféTO impacted their personal safety. 62% of respondents believed that sidewalk and curb lane cafés should be permitted after COVID-19 has passed, and many stated that increased inspections of cafés and consultation with the accessibility community is important for the future of the program.

Staff also held feedback sessions with program stakeholders including cyclists, road safety organizations and the Toronto Association of Business Improvement Areas (TABIA). Generally, feedback received was positive with improvements requested for increased enforcement of CaféTO guidelines and enhanced safety and design criteria for curb lane cafés. TABIA representatives suggested improvements to the registration process, specifically the introduction of a singular registration deadline.

## **Sidewalk Cafés**

In 2019, City Council adopted Chapter 742, Sidewalk Cafés, Parklets and Marketing Displays, which introduced a harmonized bylaw and fee structure that replaced multiple

bylaws regulating outdoor dining in the former municipalities dating from before amalgamation. Chapter 742 went into effect in September 2019, however with the onset of COVID-19, City Council authorized CaféTO as a temporary program in June 2020 to provide restaurants and bars impacted by pandemic restrictions with streamlined access to outdoor dining opportunities in the public right of way. CaféTO allowed for the pausing of certain requirements under the bylaw for temporary permits and waived all café permit and application fees in 2020 and 2021.

In 2021, 429 restaurants opened a new or expanded an existing sidewalk café through CaféTO. 501 restaurants city-wide already carry a permanent permit for a sidewalk café issued under Chapter 742.

For 2022, staff recommend amendments to Chapter 742 that focus on reinstating and simplifying the application and permitting process and enhancing the customer experience for operators in an effort to incorporate the positive outcomes of the CaféTO program. Staff also recommend a continued waiver of all permit and application fees in 2022 to continue to support the restaurant industry as it recovers from the effect of COVID-19.

### *Removing Setback Requirements*

Staff recommend removing minimum setback requirements for sidewalk cafés on public property from residential zoned properties to provide more flexibility for operators pursuing a permanent permit.

Chapter 742 currently stipulates that a permit area must maintain a minimum separation distance of 30 metres from the closest part of the permit area to the nearest lot in a Residential Zone Category or Residential Apartment Zone Category, consistent with the applicable zoning bylaws that regulate patios on private properties. Chapter 742 also requires that a permit area must have a minimum separation of six metres from the closest part of the permit area to the extended boundary of a lot in a Residential Zone or Residential Apartment Zone Category on the opposite side of the street across from the proposed permit area. These requirements did not apply under the CaféTO program. Minimal complaints were received for these specific situations, which staff believe is due to the 11:00 p.m. closure time required of most cafés in these streetscape contexts.

### *Simplifying the Café Application Process*

Staff recommend that Chapter 742 be amended to remove the public notice process and refusal of sidewalk café applications based on public objections. Removing this requirement will support the goal of simplifying the café application process and aligns with the structure of the CaféTO program, under which there was no similar process.

Chapter 742 sets out a process for public notice of applications and when staff must refuse an application. Currently, the bylaw states that as part of a sidewalk café application, there must be a 21-day notice period, during which time notice of the application must be displayed by the applicant. The public may provide comments or objections to staff through email or post mail. Chapter 742 also requires that staff provide notice of a completed application to the applicant, local ward councillor, local

BIA, local resident association and, where a sidewalk café permit area is proposed on a local road, property owners and occupants within a 60 metre radius. Staff must refuse a sidewalk café application if there are multiple objections received. Since the bylaw does not prescribe a specific number, an application will be refused if more than one objection is received.

Staff found that this is not a significant issue for the public as identified in the CaféTO survey. When asked, "how important is it to you that you be notified of new applications for outdoor cafés in your neighbourhood and have an opportunity to comment?" 71% of respondents indicated that it was not important. Of the remaining respondents, 19% stated that it was somewhat important, and 10% stated that it was very important.

The application process for permanent liquor licences for establishments under the AGCO provides an opportunity for community input. For residents who have concerns about the actions of a specific operator, the City has multiple tools available to investigate these actions. The City has bylaws that set out minimum standards and requirements that must be met with respect to waste, noise, and appropriate use of the public right-of-way to ensure health and safety. If required, enforcement steps may be taken by staff to ensure compliance.

Eating establishments are also subject to additional requirements and screening criteria as a licensed business category under Chapter 545, Licensing. Business operators that are not compliant with the conditions of their business licence may have their licence refused, suspended, revoked, or have conditions imposed upon it by the Toronto Licensing Tribunal.

#### *Proof of Property Owner Consent*

Staff propose removing the requirement to submit proof of property owner consent to a sidewalk café application. Chapter 742 requires a permit applicant that does not own the property where their business is located to submit a letter signed by the owner of the property indicating that they do not object to the café application.

There have been minimal issues with this requirement in the past, and in most cases, property owners are supportive of the occupant's business and want the business to succeed by expanding their footprint. Under the CaféTO program, the City did not require operators to seek these letters of permission and found that it helped streamline the process.

#### *Extended Frontage Permit Areas*

Staff recommend allowing letters of consent to be received from the occupant of the adjacent property in addition to, or in place of, the adjacent property owner if a sidewalk café operator wants to expand their café in front of a neighbouring business. This would make it easier for a café owner to secure permission to expand a café beside their establishment.

Chapter 742 allows the extension of a permitted sidewalk café or marketing display area across the front of an adjacent property where a letter of consent from the adjacent

property owner is submitted. If a letter is received from an adjacent property owner revoking the consent, the permit is amended to remove the portion of the permit area which extends across the front of that adjacent property.

Staff also propose amendments which would allow the Executive Director of Municipal Licensing and Standards to permit an extended frontage area if the applicant has sought to contact the adjacent property owner through reasonable methods and has not received a response. This would support operators whose business is located next to unoccupied properties with owners who are difficult to identify and reach.

In these specific cases, the City has granted permission to occupy this space through the CaféTO program, with the caveat that if the space becomes occupied by a new business, or if the property owner contacts the city to object to the expansion, the café operator will be given 30 days to reduce their permit area if the new occupant does not agree to the expansion. Staff recommend introducing this process permanently in Chapter 742.

### *Propane Heaters*

Staff recommend that propane heaters be permitted on sidewalk cafés provided they are operated in conformity with the manufacturer's instructions and specifications, and any other required regulations.

Under Chapter 742, propane heaters are currently permitted on sidewalk cafés, but operators are required to submit documentation install them. Under the CaféTO program, this documentation was not requested. Staff recommend amending this section to put the responsibility of safe operation on the operator, rather than proactively collecting the information, to further streamline the application process.

### *Fencing*

Chapter 742 currently sets out fencing requirements for permit holders. Staff recommend clarifying in the bylaw that operators can use any form of delineation as long as cane detectability, height and other standard requirements are met.

## **Curb Lane Cafés**

In 2021, the curb lane café portion of the CaféTO program enabled the closure and conversion of 12 linear kilometres of curb lane space into expanded outdoor dining space for 940 restaurants and bars. For many operators, CaféTO curb lane cafés represent the most significant opportunity for expansion of dining space in the right of way, particularly in areas where narrow sidewalks prevent the installation of a sidewalk café. The introduction of widespread curb lane closures on Toronto's retail main streets, particularly in areas with a high saturation of restaurant and bar establishments, has changed the way people perceive the value of the right of way. As confirmed by the CaféTO survey results, the public has embraced the program's ability to transform the general atmosphere and liveliness of some of the city's most iconic neighbourhoods.

The majority of curb lane cafés approved under the CaféTO program were located in areas where there are restrictions or prohibitions for parking, standing or stopping in effect, including peak hour travel lanes. These locations are not permitted under the regulations for curb lane/parklet cafés in Chapter 742. More work is required to monitor the impact of long-term curb lane closures on the travel network and determine what congestion mitigation strategies might need to be deployed in order to support permanent café installations, particularly as the city returns to pre-pandemic traffic levels. 2022 is proposed as a final transition year before permanent program criteria are adopted to determine the permanent regulations of curb lane/parklet cafés. A traffic impact analysis will be conducted and staff will use a data-driven policy methodology to guide proposals to amend Chapter 742 to establish permanent program criteria for CaféTO curb lane installations in 2023.

### **Curb Lane Café Design Considerations**

Similar to 2020, curb lane closures were designed and installed as long-duration lane closures based on guidance from Book 7 (Temporary Conditions) of the Ontario Traffic Manual, which aims to provide predictability of lane obstructions for vehicle drivers using consistent, appropriate applications of traffic control equipment. A common critique of the CaféTO curb lane café areas was their construction zone appearance despite increased permissions in 2021 for participants to install temporary platforms, fencing, planter boxes and other delineating items to provide a barrier between the café area and the street. While staff observed that many restaurants took advantage of this opportunity, leading to improved aesthetics, more predictable cycling pathways and a reduction of curbside clutter, additional work is required to improve the look and feel of the curb lane café areas.

Additionally in 2021, staff were made aware of 5 collisions involving a motor vehicle and a CaféTO installation. While no injuries as a result of these incidents were reported, it does highlight that the CaféTO program is not without risk. In consideration of these factors, staff are continually monitoring the closure areas as well as jurisdictional best practices in order to provide the safest café areas possible. These ongoing efforts may result in an adjustment to the equipment types deployed in the 2022 program.

Significant correspondence was also received in 2021 about the impact of CaféTO on available curbside space to conduct loading and unloading activities and on-street parking inventories. To respond to the demand for balance in the vicinity of CaféTO areas, staff will undertake a pilot project in 2022 that will establish advisory loading and unloading zones when a substantial percentage of a block face is reserved for CaféTO curb lane café installations.

#### *Fire Services Review of Curb Lane Café Design*

One of the most commonly installed types of fencing seen in 2021 was an interlocked, opaque, modular wood block system. In some cases, there was a significant length of curb lane café frontage equipped with continuous rigid fencing, effectively blocking all access from the street to the sidewalk. When a barrier is too continuously long it prevents immediate access to the main entrance of a building or fire department connections, which is especially problematic when laying hose lines.

While this and other types of temporary fencing conformed to CaféTO temporary fencing guidelines, a review of the CaféTO guidelines in 2021 conducted by Fire Services identified the need to improve emergency fire access requirements.

Chapter 742 requires the circulation and review of curb lane/parklet café applications by a number of different entities, including Fire Services. CaféTO has paused this requirement in order to support the quick installation of curb lane closure areas. To ensure access to nearby buildings for Fire Services, staff propose a secondary safety review at the application stage when an individual closure area will exceed 15 metres. This review would include an assessment of the nearby built environment including fire connection and hydrant locations and may result in direct communication with café operators about fencing adjustments, if they are required. As the average curb lane café size is 12 metres, this secondary review will have minimal impact on the program at large.

### *Cycling Guidelines*

CaféTO guidelines outline specific spatial offset requirements between curb lane cafés and the live path of motor vehicle traffic to provide sufficient space for cyclists to travel within the curb lane. A 1.5m offset is required on all streetcar transit routes, which has an increased risk factor due to the presence of streetcar tracks, and a 1.2m offset is required for all non-streetcar roadways.

Curb lane cafés are not permitted to encroach upon or be installed within a dedicated bike lane or cycle track. However, in certain locations there is an opportunity for cafés on streets where there is an installed cycle track that can be safely detoured around the café. The width of the cycle track is not impacted, and cafés in bike lanes have extended tapers to provide cyclists opportunity to maneuver safely around the café.

There are no proposed changes to these guidelines in 2022 but there will be increased enforcement to ensure required offsets are maintained for cyclist safety.

### *Bicycle Parking in Café Areas*

The installation of curb lane cafés along major cycling commuter corridors impacted the availability of bike parking through the City's permanent bicycle locking ring program. Operators were permitted to take a bicycle locking ring out of service only in scenarios where the bike ring would fully impede access to a curb lane café. While most operators abided by this direction, there were incidents of operators removing all of the bicycle parking along the length of their curb lane closure, which was not permitted and will be more strictly enforced going forward.

To help alleviate the loss of bike parking, a pilot initiative was conducted to install temporary bicycle parking corrals adjacent to curb lane cafés in BIAs. Three temporary installations were installed in 2021 and deployment of additional bike parking will continue to occur in 2022.

### *Road and Sidewalk Maintenance*

CaféTO installations had an adverse impact to road, sidewalk and utility maintenance activities, causing delays in some work scheduled in areas that conflicted with cafés and requiring that the work be carried over to 2022. Improved coordination between city staff, utility partners, and café operators is required in 2022 to allow for the timely completion of required on-going maintenance and state of good repair work on city streets, sidewalks and utility assets while minimizing the impact of this work on cafés.

### **Curb Lane Café Space Allocation**

Under Chapter 742, as part of café applications on the street, a letter of permission from a neighbouring property owner is required if the applicant is looking to expand a curb lane/parklet café beyond the applicant's business frontage. This requirement was waived in 2020 and 2021 to allow for the quick installation of the curb lane cafés for restaurants located within the boundaries of a BIA, given the management role the BIA plays in their specific streetscape areas. Although some concerns were raised by neighbouring properties and businesses adjacent to curb lane cafés about another business operating in front of their establishment, the waiver of this requirement allowed for a streetscape focused approach to allocation of curbside space, which resulted in more overall space dedicated to cafés.

#### *Recommendations for 2022*

Staff propose a continued waiver of the requirement for a permission letter to expand a curb lane café in front of a neighbouring business. Staff also propose extending this waiver to restaurants that are not located in BIAs.

When reviewing curb lane café applications, staff will develop a block by block site plan guided by criteria based on a defined order of priority, including but not limited to:

- Traffic safety considerations, including equipment installation requirements and setbacks from intersections;
- Prioritizing café placement directly in front of an applicant's business;
- Providing applicants with the opportunity to indicate their desired café length and location in consideration of factors like maximum café lengths, neighbouring restaurant applications and other local circumstances; and
- Integration of other curbside uses, such as advisory loading zones, on-street parking and BIA-sponsored public parklets, as determined by staff.

Staff will be developing an operational policy to guide the determination of space using the above principles. This policy will provide increased transparency into the allocation of space and will be published as part of the CaféTO guidebook in advance of the launch of registration. Information sessions on this change are also being planned.

### **Curb Lane Café Accessibility**

Accessibility is a critical element in the development, design and operation of cafés in the right of way, and many requirements supporting accessibility are prescribed in Chapter 742. In particular, Chapter 742 mandates that a platform be installed on a curb lane/parklet café to ensure a level walking surface between the sidewalk and the café.

The CaféTO program in 2020 prohibited platforms in order to accommodate the quick-start nature of the CaféTO program, given the requirement for professional drawing submissions and site inspections. In 2021, the CaféTO program allowed, but did not require, platforms to be installed in curb lane cafés. For operators that did not build a platform, the City installed an asphalt ramp.

308 CaféTO applicants initially expressed interest in a temporary platform, but only 35 were ultimately installed. Applicants reported that a significant restricting factor to installing a platform was the price of lumber and a labour shortage to build the structure itself. Staff estimate the cost of a platform (including professional drawings, materials and labour) is between \$5,000 and \$12,000, depending on the size, design complexity and materials used.

### *Temporary Curb Lane Café Platforms in 2022*

In 2022, CaféTO will continue to permit curb lane cafés without a platform. Operators who choose not to install a platform on their curb lane café will be responsible for providing accessible access to their curb lane café through the supply of a temporary ramp.

As temporary platforms provide step-free accessibility to the café area and eliminate the need for temporary ramps, the use of platforms for curb lane cafés is strongly encouraged in 2022, where they are operationally feasible. To provide additional support to operators, staff will develop more robust information on the process involved in applying for, designing and constructing a temporary platform.

It is acknowledged that this is a temporary solution only and the mandate in Chapter 742 to construct a platform on a curb lane café will be reinstated in future years.

### *Financial grants for CaféTO in 2022 and 2023*

In October 2021, City Council approved a new Community Improvement Plan allowing certain businesses to receive grants from the City through a new Commercial and Industrial Property Improvement Program. Funded by up to \$1M from the Federal Economic Development Agency for Southern Ontario, an initial focus of this new program will be to support businesses participating in the CaféTO program between 2022 and Q1 2024. Specifically, CaféTO operators will be eligible for matching grants of up to \$7,500 to improve safety and accessibility of their curb lane café, including costs related to temporary platforms, technical drawings, and other program and design elements to meet Ontario Building Code and provincial AODA guidelines.

## **Enforcement**

In 2021, both Transportation Standards Officers and Bylaw Enforcement Officers enforced CaféTO guidelines and other city by-laws related to outdoor dining in Toronto. Transportation Standards Officers are primarily responsible for issues in the right of way, such as maintaining the pedestrian clearway, illegal structures and encroachment of materials into the cyclist or vehicle traffic lanes. Bylaw Enforcement Officers are



responsible for noise concerns, business licensing requirements and enforcement of the temporary use zoning by-law on private property, among other enforcement issues that may arise from outdoor dining.

In 2021, Transportation Services received 308 complaints related to right of way issues arising from CaféTO. Prior to COVID-19, Transportation Services was not generally responsible for complaints related to patios and CaféTO represents a new pressure on Transportation Services enforcement. Complaints received were related to pedestrian clearway infractions, disputes over allocation of curb space, traffic congestion or road and bikeway infractions.

A significant number of complaints related to noise and other concerns such as non-compliance with public health restrictions (e.g. mask bylaws) were also received by staff throughout 2021, particularly over the course of the summer. Between January and September 2021, Municipal Licensing and Standards received 630 complaints related to patios, of which 399 were related to noise. The number of patio-related complaints received by Municipal Licensing and Standards in 2020 and 2021 represents an increase of over 100% compared to 2019. Additional enforcement staff may be required in Municipal Licensing and Standards given the increasing number of complaints. Staff will continue to monitor these trends and will evaluate staffing needs in 2022.

### *Enforcement in 2022*

In 2022, Transportation Services will continue to evaluate and accommodate enforcement needs for CaféTO while balancing the gradual return of enforcement needs from pre-pandemic activities (i.e. Street Events). In 2023, Transportation Services will consider more permanent resourcing that will be solely dedicated to enforcement for CaféTO during the outdoor dining season. This new team will result in a higher level of proactive inspections of permitted R57 sidewalk cafés and CaféTO curb lane café participants to identify and rectify non-compliance issues arising from outdoor dining in the right of way. Entering into the third year of CaféTO, the approach in achieving compliance amongst the participants will shift from an education/consultation model to one focused on enforcement and providing a more timely response to complaints.

### **Insurance**

In 2020 and 2021, City Council approved a reduction in the typically required level of commercial general liability coverage for café operators from \$2 million to \$1 million due to concerns about access to the additional coverage.

Staff reviewed the insurance requirements for cafés in comparable jurisdictions across Canada, and found that all municipalities reviewed require \$2 million of coverage or more. City staff also consulted with the Insurance Bureau of Canada and were advised that previous issues related to obtaining additional coverage due to the onset of COVID-19 have been addressed. Furthermore, the majority of CaféTO applicants did not indicate to staff that they had challenges obtaining the required insurance coverage to participate in the program. There may be additional costs to an operator who currently

has insurance for \$1 million and increases coverage to \$2 million however, staff are unable to estimate this cost as it is wholly dependent on individual insurers.

It is difficult to estimate the quantity, value or nature of the claims which could be made against the City. The City's Insurance and Risk Management division advises that if such claims are made and are successful, a reduced insurance requirement exposes both the City and the operator to amounts awarded which exceed the reduced coverage limit. As such, staff recommend requiring that all operators maintain at all times commercial general liability insurance with a minimum limit of \$2 million if they wish to operate a café on the public right of way.

### **Patios in Hard-Surfaced Parks**

As an extension of the CaféTO program, Parks, Forestry and Recreation permitted restaurants adjacent to a hard-surfaced park to expand an outdoor dining space into parkland. In 2021, seven restaurants were supported by the CaféTO Patio in Parks program.

#### *Recommendations for 2022*

The CaféTO Patios in Parks program will continue to be permitted on a temporary basis until April 2023. Parks, Forestry and Recreation will analyze the impact of these patios to Parks Operations and a recommendation for the CaféTO Patio in Parks program would be incorporated into the Q1 2023 report to City Council. No substantial changes to the parameters of this program are proposed for 2022.

### **Amplified Live Music on Patios Pilot Program 2021**

At its meeting on June 8, 2021, City Council authorized a pilot to permit amplified music on patios in Davenport, Toronto-Danforth and Beaches-East York within scheduled times of day and certain days of the week from August 1 – October 31, 2021. City Council at its meeting of October 4, 2021 expanded this pilot to include Spadina-Fort York. Any music – whether amplified during the prescribed times, or unamplified at other times – is still subject to requirements under Chapter 591, Noise.

As part of the program, a \$10,000 grant was made available to BIAs in the participating wards, to encourage the curation of music programming and to help promote live music performances in their patio spaces and the general vibrancy created by the pilot. To date, 9 BIAs and 65 restaurants have participated in the pilot.

The Music Office will be surveying stakeholders at the end of the pilot for feedback and in consultation with Municipal Licensing and Standards, will be reporting back to Economic and Community Development Committee on results.

### **Patios on Private Property**

At its meeting of March 10, 2021, City Council authorized an extension of the temporary use zoning by-law which provided permission to expand outdoor dining spaces on private property, including parking lots, without the need for an application to the City.

There are certain regulations to the temporary use by-law, such as the need to locate the outdoor dining area on the same lot as the establishment, and a setback requirement of 30 metres from a residentially zoned property. If a business was interested in operating a private patio and did not meet the regulations of the temporary use by-law, a site-specific by-law approved by Council may grant specific permission to that business. In 2021, 15 temporary site-specific by-laws for outdoor dining were authorized by City Council.

The Economic Development and Culture division led several initiatives to promote awareness of the temporary use zoning by-law. As there is no requirement for an application or registration to expand a patio on private property, data on how many restaurants operated patios on private property remains limited, although industry feedback and anecdotal evidence suggests the numbers are growing.

Recognizing the limitations of outdoor dining on the public right of way in the Scarborough streetscape context in particular, staff held a series of meetings in March 2021 with Scarborough Councillors to discuss expanded outdoor dining in the suburban environment, focusing on strategies to educate restaurants about the opportunities best suited for their business. These meetings led directly to an enhanced business outreach strategy to all restaurants in Toronto that included the following initiatives:

- A pamphlet specific to expanding private patios was produced and posted on the CaféTO website;
- Postcards about outdoor dining opportunities were printed and mailed to every business with a B71 (Eating Establishment) business licence in Toronto, which provided details on how to quickly expand a patio on private property;
- A flyer was produced and translated into Traditional Chinese, Tamil, Tagalog, Farsi, Russian and French which provided information about the CaféTO website;
- Information on the CaféTO website was designed to be easily translatable using the translate feature on the City of Toronto website; and
- Social media posts containing information about expanding outdoor dining on public and private property were shared from City of Toronto accounts.

Restaurant industry contacts indicated to staff that many restaurants struggled to raise the capital required to purchase patio furnishings in 2020 and 2021. To support the industry with this essential element of establishing new outdoor dining areas, staff worked with two furniture rental companies in Toronto to provide a discounted furniture rental package, which was advertised and promoted to restaurants and bars by Restaurants Canada and the Ontario Restaurant Hotel & Motel Association.

#### *Recommendations for 2022 and beyond*

The temporary use zoning by-law approved by City Council in March 2021 is currently authorized until April 14, 2022. In view of the continued importance of providing a mechanism for operators of restaurants to establish patios on private property, particularly in suburban areas of the city where the streetscape makes café extensions on sidewalks or in curb lanes less feasible, it is anticipated that City Planning will report to Planning and Housing Committee in Q1 2022 on a further extension of the temporary use zoning by-law.

In addition to continuing efforts to promote awareness of the temporary use zoning by-law among business operators, the establishment of patios on private property will also be supported by the plazaPOPS initiative between 2022 and 2024. First piloted in Scarborough's Wexford Heights BIA in 2019 (WexPOPS), plazaPOPS is a community-led place-making approach to transforming sections of strip mall parking lots into free, safe, and green community spaces, while directly supporting small businesses in the process. It is an innovative and demonstrated economic and community development strategy tailored to the urban form of Toronto's inner suburbs. As part of the Main Street Recovery and Rebuild Initiative funded by the Federal Economic Development Agency for Southern Ontario, plazaPOPS will receive approximately \$1 million to enable the implementation of up to 15 plazaPOPS locations in Scarborough, North York, Etobicoke, and other inner suburban areas of Toronto over the next three years.

### Outdoor Dining Winterization Charrette

Economic Development and Culture, together with the Design Industry Advisory Committee (DIAC), will be hosting a virtual design charrette to investigate innovations to enhance safe outdoor dining opportunities into the colder months. Experienced designers will work with the City and key industry stakeholders (restaurants, BIAs, industry associations, etc.), to problem solve and develop potential solutions. DIAC will summarize the high level recommendations, insights, tips and resources in a summary report in electronic form, to be shared with the City and stakeholders.

### Program Costs, Fees and Financials

In 2021, direct expenditures attributable to CaféTO were estimated at **\$2,050,297** from Transportation Services, Municipal Licensing and Standards and Economic Development and Culture. These costs are broken down as follows:

<b>CaféTO Expenditure</b>	<b>Cost (including HST)</b>
Consultants and Contractors (Traffic plans, safety reviews)	\$711,776
Equipment (planter boxes, lateral café barriers, accessible picnic tables, traffic control materials)	\$840,006
Public Communications (printed material and mail-outs)	\$9,245
Staffing (Overtime for staff reviewing and approving applications and for staff installing and maintaining curb lane cafés)	\$306,995
Queen Street W TTC Work (Café removals and reinstallations)	\$16,645
Planter Maintenance Grants to BIAs	\$165,630
<b>Total</b>	<b>\$2,050,297</b>

**Staff Salary Equivalent**

As CaféTO is not a permanent program, staff from Transportation Services and MLS were reassigned from their normal duties to support program operations. The following represents the estimated equivalent expense for staff time dedicated to CaféTO:

<b>Division</b>	<b>Equivalent Expense for Salary of CaféTO dedicated FTEs</b>
Transportation Services - Operations and Maintenance	\$894,313
Transportation Services - CaféTO Program Staff	\$330,106
Transportation Services - Enforcement	\$397,079
Municipal Licensing and Standards - Licensing	\$411,690
<b>Total</b>	<b>\$2,033,188</b>

**Lost Revenue**

In 2021, the Toronto Parking Authority reported that curb lane cafés resulted in a temporary removal of 1,813 pay and display parking spaces, resulting in an estimated revenue loss specifically attributable to CaféTO of \$2.26 million.

To support restaurants and bars impacted by COVID-19, City Council authorized the waiver of all existing sidewalk café permit fees in 2021 resulting in a revenue loss of \$775,000 for Municipal Licensing and Standards.

**Waiver of Fees for CaféTO 2022**

When adopted in 2019, Chapter 742 introduced a new fee structure for sidewalk cafés and public parklets. This consisted of an application fee, a transfer fee and an annual permit fee based on market value for the use of public space – all of which have a foundation in cost recovery. The annual permit fees apply to new sidewalk café operators each year, based on the size of the café (per square metre) and location in the city (inner or outer zone), and Council directed these fees be phased in over a 10 year period for existing café operators.

The implementation of these fees was placed on hold as the City offered relief to businesses during the COVID-19 pandemic through the introduction of the CaféTO program and waiving business licensing fees for 2020 and 2021. The waiving of fees for existing permit holders resulted in a revenue loss of \$775,000 in both 2020 and 2021 for Municipal Licensing and Standards.

The effect of COVID-19 on the hospitality industry has been profound and there is a need for ongoing support for the industry as restaurants and bars continue to recover.

To continue this economic support, staff propose to waive all application, transfer and permit fees for sidewalk and parklet cafés in 2022. As part of the review of the CaféTO program in 2022, an analysis of fees for outdoor dining will be conducted with the aim of ensuring alignment with economic recovery efforts while understanding the need to recover costs for the use of the public right of way by private business. The results of this review will be brought forward to City Council as part of the Q1 2023 staff report.

## **CaféTO 2022 Projected Program Costs and Staffing**

### *Transportation Services*

Transportation Services is projecting a cost of \$1,500,000 for CaféTO in 2022, including \$750,000 for consultant services and \$750,000 for enhanced traffic safety equipment to be installed as part of the curb lane closures and other operational needs.

Although much of the equipment from CaféTO in 2020 and 2021 will be reused in 2022, it will be necessary to purchase new traffic safety equipment to ensure that the curb lane cafés remain safe.

In 2020 and 2021, a majority of the CaféTO program staff were redeployed from other units within Transportation Services. In 2022, Transportation Services will continue to accommodate staffing needs to the overall program management and operations of CaféTO while evaluating and balancing the staffing needs of existing programs as programs return to pre-pandemic levels. A dedicated Transportation Services CaféTO team will be considered in the 2023 Budget that concentrates on application support, assessment, and compliance during café season. Details of the staffing requirements will be determined based on the expected size and criteria of the permanent CaféTO curb lane/parklet cafés program which will be included in the Q1 staff report for 2023.

### *Economic Development and Culture*

The input of Business Improvement Areas has been important to the success of CaféTO and the City's ability to implement the program in a timely and effective manner. The City's network of 85 BIAs, supported by staff in EDC's Business Growth Services section, have been instrumental in communicating with participating businesses, activating and animating public parklets, and identifying solutions to meet local needs.

To continue direct communication with local businesses and support the participation of BIAs, temporary positions will be requested through the 2022 Operating Budget Submission for Economic Development and Culture.

### *Municipal Licensing and Standards*

This report recommends the creation of two new temporary full-time equivalent (FTE) positions in Business Licensing and Regulatory Services, including one temporary Support Assistant B and one temporary Support Assistant C to manage approximately 250 applications that are expected once the Chapter 742 process resumes. This estimate is based on the number of CaféTO participants who did not otherwise have a

sidewalk café permit. The cost of these positions, including salaries and benefits, is \$155,173.

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## SIGNATURE

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## ATTACHMENTS

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Attachment 1 - CaféTO 2021 Public Survey Summary  
Attachment 2 - CaféTO 2021 Participation by Ward