

Options to Address COVID-19 Impacts on Live Music Venues and Artists

Date: September 22, 2021

To: Toronto Music Advisory Committee

From: Chief Planner and Executive Director, City Planning;
Executive Director, Municipal Licensing and Standards Division

Wards: All

SUMMARY

This report provides information in response to the March 25, 2021 request from the Economic and Community Development Committee for staff to review zoning, licensing and other measures to allow live music venues to operate as other business types that would be permitted to remain open, pursuant to Ontario's *Reopening Ontario (A Flexible Response to COVID-19) Act, 2020*. Staff were also requested to review and make any recommendations with respect to the City's Noise By-law (Toronto Municipal Code, Chapter 591) to recognize that, while COVID-19 health regulations are in effect, artists are required to work from home.

Conversion of live music venues to other uses

During the COVID-19 pandemic, public health measures and provincial emergency orders limited the ability for live music venues to operate at regular capacity, or required them to close entirely. During this time, live music venues may consider temporarily shifting to different uses that would be permitted under different public health measures or restrictions, in order to avoid financial hardship and possible permanent closure.

The determination of compliance with zoning for an interior use conversion is made by staff in the Toronto Building Division through a range of zoning review applications or during a building permit application. If the interior use conversion complies with the zoning by-law, no further action is required except for an application for a building permit where it is necessary.

If the interior use conversion does not comply with zoning, several paths of implementation are available:

- Committee of Adjustment minor variance applications;
- Zoning By-law amendment applications; and
- Temporary Use By-laws

In addition to complying with the applicable zoning regulations, live music venues planning to operate as a different business licence category must also ensure compliance with the City's Licensing By-law (Toronto Municipal Code, Chapter 545). Therefore, if a venue intends to operate as a different business type, they must ensure they obtain the proper licence (if applicable) and adhere to any licensing requirements.

Musicians working from home

Public health restrictions also limited the ability for musicians and artists to work in production studios and live music venues due to capacity limits and restrictions on non-essential businesses. As a result, they may have been required to work from home or temporarily suspend their operations.

Generally speaking, a musician practicing an instrument or singing within their own home, with minimal use of rehearsal equipment such as speakers, amplifiers and mixers, is an incidental and ancillary enjoyment of the home, and can continue as-of-right.

Conversely, a group of musicians practicing an instrument or singing, with extensive use of rehearsal equipment such as speakers, amplifiers and mixers, would generally be considered a *performing arts studio* or *production studio*, and this use is not permitted in residential zones. The public portrayal of the use, for example by advertising the home as a production studio available for use, is also a factor in considering classification of the use as a *performing arts studio* or *production studio*.

Amendments to the Noise By-law are not required to allow artists to work from home. The Noise By-law regulates the level of sound, not the content or where it is being played.

RECOMMENDATIONS

The Chief Planner and Executive Director, City Planning, and Executive Director, Municipal Licensing and Standards Division, recommend that:

1. The Toronto Music Advisory Committee receive this report for information.

FINANCIAL IMPACT

The City Planning Division and Municipal Licensing and Standards Division confirm that there are no financial implications resulting from the information included in this report in the current budget year or in future years.

DECISION HISTORY

At its meeting on March 25, 2021, the Economic and Community Development Committee adopted item EC20.11, requesting the Chief Planner and Executive Director, City Planning and the Executive Director, Municipal Licensing and Standards, in consultation with other relevant City staff, to review zoning, licensing, or other measures to allow live music venues to operate as dance studios, gyms, or other businesses that have been allowed to open under different measures or restrictions than live music venues, pursuant to Ontario's COVID-19 response framework, and report on the possible implementation to the Toronto Music Advisory Committee.

The Economic and Community Development Committee also requested the Executive Director, Municipal Licensing and Standards and the Chief Planner and Executive Director, City Planning, in consultation with other relevant City staff, to review and make any recommendations with respect to the Noise By-law to recognize that, while COVID-19 health regulations are in effect, artists are required to work from home, and homes may not be considered workplaces, which limits the ability for artists to thrive while working from home similar to other professionals who work from home, and report on the possible changes to the Toronto Music Advisory Committee.

The Economic and Community Development Committee's decision can be accessed at this link: <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2021.EC20.11>

COMMENTS

This report provides information in response to two requests from the Economic and Community Development Committee related to COVID-19 Impacts on Live Music Venues and Artists:

1. City Planning and Municipal Licensing and Standards Division review zoning, licensing, or other measures to allow live music venues to operate as other business types that have been allowed to remain open pursuant to Ontario's COVID-19 response framework.
2. City Planning and Municipal Licensing and Standards review and make any recommendations with respect to the Noise By-law to recognize that, while COVID-19 health regulations are in effect, artists are required to work from home.

1. Conversion of live music venues to other uses

During the COVID-19 pandemic, public health measures and provincial emergency orders limited the ability of many non-essential businesses to operate regularly, or at all, due to physical distancing requirements, capacity reductions, or closure orders. Live music venues were required to remain closed for the majority of the pandemic.

During increased public health restrictions, live music venues may consider temporarily shifting to other non-residential uses subject to more permissive public health measures or restrictions.

Zoning Regulations

Existing live music venues, which may operate as a stand-alone music venue (defined as an *entertainment place of assembly*) or which may be operated as an ancillary use within an existing premises, such as an eating establishment or a banquet hall, are primarily located in the *Commercial Residential* zone, which permits a wide range of non-residential uses, including dance studios (performing arts studio) and gyms/fitness centres (recreation use).

The *Commercial Residential* zone has a range of use categories that are permitted as-of-right, that include but are not limited to:

- *art gallery*
- *artist studio*
- *education use* (example: tutoring centre)
- *massage therapy*
- *performing arts studio* (example: dance studio)
- *personal service shop* (examples: barber or nail salon)
- *wellness centre* (example: reiki healing)

It is important to note that in step one (shutdown zones) of the *Reopening Ontario (A Flexible Response to COVID-19) Act, 2020*, only *massage therapy* from the above list would have been permitted to open. In step two of the Act, the remaining uses would be permitted to open, but would still be subject to public health restrictions, such as capacity restrictions. It is important to consider the *Reopening Ontario (A Flexible Response to COVID-19) Act, 2020* when considering a conversion to a different use.

Other challenges beyond zoning and licensing regulations to consider for an interior use conversion include the *Building Code Act, 1992, S.O. 1992*, as administered by the Toronto Building Division, as well as the *Health Protection and Promotion Act, R.S.O. 1990*, as administered through Toronto Public Health, where food handling and serving is proposed.

Existing Conversion of Use Procedure

Applications to convert an existing use of a premises to a new use are submitted to the Toronto Building Division, generally following this procedure:

- A Preliminary Project Review or Zoning Certificate application is submitted. The preparation of a detailed site plan, which must be fully dimensioned and showing adjacent properties and building setbacks is required. The preparation of floor plans, which are fully dimensioned and indicating uses of all spaces are also required.
- Plan Review staff determine compliance with zoning, and advise the applicant accordingly. If the proposal complies with the zoning by-law, the applicant is advised

in writing, and where a building permit is required, the applicant can then submit a complete building permit application. If the proposal does not comply with the zoning by-law, the applicant can either revise the proposal to comply, or they may proceed with one of the compliance options listed in the following three sections.

- Some interior use conversions will require a building permit, and where this is required, the applicant proceeds with the building permit application process.

Compliance Issues

There may be many options to convert live music venues to other uses that comply with zoning regulations, however, if a proposal to convert a space to another use does not comply with existing zoning regulations, then there are various processes to obtain approval.

Revisions to Proposal

Where a proposal to convert a live music venue to another non-residential use is not fully in compliance with zoning regulations, the applicant may revise the proposal to meet the in-force zoning requirements.

Minor Variance Applications

Where the conversion of a live music venue to another non-residential use that is not permitted due to non-compliance with the zoning by-law is proposed, the proponent of that proposal may make an application for minor variance approval to the Committee of Adjustment. The Committee of Adjustment consists of Council appointed citizen members who regularly hold public hearings to consider these applications. The panel members approve, approve subject to conditions, or refuse an application. The timeline from the submission of an application to the public hearing itself is typically three to four months.

Zoning By-law Amendment Applications

Where the conversion of a live music venue to another non-residential use that is not permitted due to non-compliance with the zoning by-law is proposed, the proponent of that proposal may elect to submit a zoning by-law amendment application. This application is typically used for complex redevelopments and has a significantly higher application fee and implementation timeline than a minor variance application.

Zoning By-law amendment applications require at least one community meeting for the purpose of giving the public an opportunity to make representations in respect of the proposed by-law and a statutory public meeting before Community Councils. The timeline for a zoning by-law amendment application is typically one year to 18 months, and approvals are subject to appeal to the Ontario Land Tribunal (formerly Local Planning Appeal Tribunal).

Temporary Use Zoning By-laws

Section 39 of the *Planning Act, R.S.O. 1990*, allows municipalities to pass by-laws allowing for the temporary use of land, buildings or structures for any purpose that is otherwise prohibited by a zoning by-law. Temporary use by-laws must define the area to which it applies and specify the period of time for which the authorization shall be in effect, with a maximum permitted time of three years from the passing of the by-law.

A temporary use by-law is one option for permitting the conversion of one, or many, live music venues to other uses that would otherwise not be permitted by the zoning by-law or where existing zoning regulations would be too restrictive to be operationally feasible. A temporary use by-law has the same public meeting requirement as a zoning by-law amendment application.

As an example of a city-initiated temporary use by-law, at its meeting on October 27, 2020, City Council enacted Temporary Use Zoning By-law 910-2020 to temporarily ease restrictions specified in Harmonized Zoning By-law 569-2013 affecting outdoor patios. The expiry date of this temporary use zoning by-law was extended from May 25, 2021 to April 14, 2022 by City Council at its meeting on March 25, 2021. The committee's decision can be accessed at this link:

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

Ontario Regulation 345/20 made under the *Emergency Management and Civil Protection Act, R.S.O. 1990*, accelerated the implementation of the Outdoor Patio Temporary Use By-laws by excluding the requirement to hold a public meeting and revoking the ability for appeals to be made. No such regulation exists for live music venues, which means the implementation timeline for this option would increase to approximately six to 12 months and any temporary use by-law would be subject to appeal.

Business Licensing Regulations

If there is a change of use, and a live music venue would like to operate as a different business type, they must comply with the Licensing By-law, in addition to applicable zoning regulations described above.

If a live music venue intends to operate as a different business type that does not require a business licence, they may elect to not renew their current licence (if they are currently required to have one). If a live music venue intends to operate as a different business type that does require a business licence, then they must ensure they obtain the appropriate licence. If a business were to continue to operate as live music venue, but advertise as a different business type, they would be in contravention of the Licensing By-law and subject to enforcement.

During the COVID-19 pandemic, businesses should also ensure that their operations are in compliance with the *Reopening Ontario (A Flexible Response to COVID-19) Act, 2020*, and any other public health measures.

2. Musicians working from home

COVID-19 public health restrictions also limited the ability for musicians and artists to work in production studios and music venues, due to capacity limits and restrictions on non-essential businesses. As a result, they may have been required to work from home or temporarily suspend their operations.

Zoning Regulations

During increased public health restrictions, it may not be possible for musicians to practice from a recording studio or other similar premises used for practicing. These types of facilities are not permitted in residential zones. There is a general distinction to be made as to the scale of practice permitted in a residential zone:

- A musician practicing an instrument or singing, with minimal use of rehearsal equipment such as speakers, amplifiers, and mixers, and within their own home, is an incidental and ancillary enjoyment of their residence and is not a use that would be restricted by the zoning by-law.
- A group of musicians practicing an instrument or singing, with extensive use of rehearsal equipment such as speakers, amps and mixers is considered a *performing arts studio* or *production studio* which are not permitted uses in residential zones. The public portrayal of the use, for example by advertising the home as a production studio available for use, is also a factor in considering classification of the use as a *performing arts studio* or *production studio*. Where a *performing arts studio* or *production studio* use is proposed, the above noted methods of implementation of 1) minor variance application, 2) zoning by-law amendment application or 3) a temporary use by-law can be considered.

Noise By-law

Amendments to the Noise By-law are not required to allow artists to work from home. The Noise By-law regulates the level of sound, not the content or where it is being played. If Municipal Licensing and Standards received a noise complaint about amplified sound from a residential property, Municipal Licensing and Standards would investigate on a priority basis (for example, based on frequency of complaints and/or community impact), and focus on education and compliance first. In some instances, the complaint would fall under the zoning by-law (for example, if the activity is technically a *performing arts studio*), rather than the Noise By-law.

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SIGNATURE

Gregg Lintern, MCIP, RPP
Chief Planner and Executive Director
City Planning Division

A handwritten signature in blue ink, appearing to read 'C. Grant', with a stylized flourish at the end.

Carleton Grant
Executive Director
Municipal Licensing and Standards Division