

1008-1010 Queen Street East, 1118 Queen Street East, 1298 Queen Street East, 106-110 Broadview Avenue, 704 Queen Street East and 3 Hamilton Street – Zoning Amendments – Final Report

Date: May 5, 2021

To: Toronto City Council

From: Chief Planner and Executive Director, City Planning

Ward 14 - Toronto-Danforth

SUMMARY

On March 10, 2021, City Council extended the expiration date of city-wide temporary use zoning by-laws (the "city-wide TUBL") that ease restrictions on outdoor patios. A TUBL is a zoning by-law to authorize the temporary use of land, buildings or structures for any purpose that is otherwise prohibited by the municipality's zoning. The purpose of the city-wide TUBL is to allow bars and restaurants to expand seating capacity outdoors, given COVID-related restrictions on indoor dining. The temporary use permissions for outdoor patios are now in place until April 14, 2022.

A Provincial Regulation under the Emergency Management and Civil Protection Act (EMCPA) amends Section 39 of the Planning Act by removing notice requirements and appeal rights to TUBL that authorize outdoor patios associated with eating establishments. Section 39 of the Planning Act provides authority to municipalities to pass TUBL.

The proposed TUBLs described in this report would allow an outdoor patio, with restrictions, to be provided in the rear yard of properties municipally known as 1008-1010 Queen Street East (East Side Social), 1118 Queen Street East (Greta Solomon's), and 1298 Queen Street East (Lloyd's). In addition, there is a request from an eating establishment at 106-110 Broadview Avenue (The Broadview Hotel), for an outdoor patio space to be located in a privately owned parking lot at the property municipally known as 704 Queen Street East and 3 Hamilton Street. The Broadview Hotel is seeking permission to convert the surface parking lot to a temporary outdoor patio space during the COVID-19 pandemic.

The proposed TUBLs are generally in keeping with the intent of the CaféTO program and the Ministerial Zoning Order (the "MZO"), Ontario Regulation 358/20, both of which permit the expansion of outdoor patios where eating establishments are permitted. The goal of both of these initiatives is to support local eating establishments as they re-open following closures resulting from 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 (2020).

RECOMMENDATIONS

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

1. City Council enact the zoning by-law amendments substantially in accordance with Attachments 1 to 4 to the report from the Chief Planner and Executive Director, City Planning Division, dated May 5, 2021.
2. City Council direct that approval be contingent on the following conditions:
 - a. signage will be posted in a prominent location to remind people to be considerate of the surrounding community;
 - b. the patios be closed at 10 PM from Sunday to Thursday and 11 PM from Friday to Saturday;
 - c. a telephone number will be provided for neighbours to register concerns or complaints directly with restaurant management; and
 - d. there will be no outdoor music or amplified sound on the patios, and doors and windows to the establishments will not be left open or propped open while there is music or amplified sound in the interior.
3. City Council authorize the City Solicitor to make such stylistic and technical changes to the zoning by-law amendments 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

Regulations Regarding Patios on Private Property

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.

<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 TUBL 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 the MZO 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.

At its meeting on October 27, 2020, City Council adopted a final report pertaining to temporary use zoning by-laws to expand permissions for outdoor patios for bars and restaurants pursuant to Section 39 of the Planning Act. The report recommended

temporarily easing restrictions for patios on private property as they relate to zone restrictions, placement and surface area. City Council enacted By-law 906-2020 to temporarily ease restrictions on outdoor patios through zoning regulations that prevail over the former municipal zoning by-laws and By-law 910-2020 to temporarily ease restrictions specified in harmonized city-wide Zoning By-law 569-2013 affecting outdoor patios. By-laws 906-2020 and 910-2020 were to expire on May 25, 2021.

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

On March 10, 2021, City Council adopted replacement city-wide temporary use zoning by-laws to expand permissions for outdoor patios for bars and restaurants pursuant to Section 39 of the Planning Act, as per the October 27, 2020 decision above. The new temporary use by-laws are set to expire on April 14, 2022.

Where the city-wide temporary use zoning by-law would not support a temporary patio, City Council also enabled staff to bring forward City-initiated site-specific temporary use by-laws to provide site-specific zoning relief for outdoor patios located on private property, subject to certain conditions.

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

Site-specific By-laws

At its meeting on July 28, 2020, City Council enacted three site-specific temporary use by-laws, 907-2020, 908-2020 and 909-2020, which ease restrictions as they relate to location and the required distance from residential zones for patios associated with eating establishments located at 229 Richmond Street West, 1012-1018 Gerrard Street East, and 95-107 Danforth Avenue and 749 Broadview Avenue. These site-specific by-laws permit outdoor patios that would not have otherwise been permitted by the City's zoning by-laws nor by the Minister's Zoning Order. The by-laws had an expiration date of November 25, 2020.

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

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

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2020.MM23.35>

At its meeting on October 27, 2020, City Council adopted a Final Report to extend the temporary zoning permissions for outdoor patios which were addressed by the MZO, as well as the temporary use zoning by-laws for outdoor patios at 229 Richmond Street West, 1012-1018 Gerrard Street East, and 95-107 Danforth and 749 Broadview Avenue, from November 16, 2020 to May 25, 2021. The City Council decision can be found here: <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2020.PH17.12>

At its meeting on November 25, 2020, City Council enacted a site-specific Temporary Use By-law, 1063-2020, to ease restrictions as they relate to the location of a patio at 94 The Esplanade, in an effort to support the eating establishment located at 67 Front Street East. The by-law was to expire on May 25, 2021.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2020.MM26.14>

At its meeting on December 16, 2020, City Council enacted a site-specific Temporary Use By-law, 1182-2020, to ease restrictions as they relate to separation from a residential zone at 139-141 Danforth Avenue. The by-law was to expire on May 25, 2021. <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2020.MM27.28>

At its meeting on March 10, 2021, City Council adopted a final report pertaining to the city-wide TUBLs, extending temporary permissions for outdoor patios for bars and restaurants as was previously done October 27, 2020 and aligning their expiration with the CafeTO program (April 14, 2022). Previously approved site-specific TUBLs were also extended to April 14, 2022.

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

PROPOSALS

City Planning has received several requests for temporary rear outdoor patios associated with eating establishments located at properties municipally known as 1008-1010 Queen Street East, 1118 Queen Street East and 1298 Queen Street East. The owners of the property municipally known as 106-110 Broadview Avenue have also requested a temporary outdoor patio located approximately 41 metres west of The Broadview Hotel, on a privately owned parking lot at the property municipally known as 704 Queen Street and 3 Hamilton Street.

For main street restaurant businesses, temporary patios are being established in the right of way under the CaféTO program, to provide additional patio capacity during restrictions related to the COVID-19 pandemic. The businesses at the above-noted addresses have applied for CaféTO curb lane cafés. Their applications are currently under technical review and will most likely be approved again, as they all had curb lane cafés last year. The temporary zoning relief is to provide additional outdoor patio capacity on private property.

In response to the requests, staff are proposing a temporary use by-law for each of these properties. The properties are all zoned CR (Commercial Residential) under Zoning By-law 569-2013, which allows both an eating establishment and an outdoor patio. Under the Zoning By-law, conditions apply to outdoor patios when they are used in combination with an eating establishment. These conditions include, among others, requiring that an outdoor patio be set back 30 metres from a lot in the Residential Zone category (R Zone). The proposed outdoor patio requests for 1008-1010 Queen Street East and 1298 Queen Street East are setback approximately 10 metres, 1118 Queen Street East is setback approximately 5 metres, and 704 Queen Street East and 3 Hamilton Street is setback approximately 15 metres from the nearest R Zone lot instead of the required 30 metres.

The site-specific temporary use by-laws would make amendments to the city-wide harmonized Zoning By-law (569-2013) and also to the former City of Toronto By-law (438-86) to allow the eating establishments to have a rear yard outdoor patio and to convert the privately owned parking lot into a temporary outdoor patio. The temporary use by-laws would be subject to restrictions prohibiting entertainment uses. The proposed by-laws specify an expiration date (April 14, 2022) which coincides with the proposed conclusion of the CaféTO program. On that date, the current zoning restrictions on outdoor patios would resume.

APPLICATION BACKGROUND

Zoning Restrictions on Private Patios

Outdoor patios on private property are regulated by zoning. The former City of Toronto Zoning By-law (438-86) 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 in the CR zone under the city-wide Zoning Bylaw 569-2013 limit the maximum size of an outdoor patio to the greater of 50 square metres or 50 percent of the interior floor area of the associated establishment. In addition to the size limitation, zoning regulations manage the potential impact of the patio on nearby properties through setback requirements, fencing requirements, a prohibition on entertainment, and limitations on outdoor patios located above the first storey (e.g. rooftop patios).

Temporary Use By-laws

Section 39 of the Planning Act provides authority to municipalities to pass temporary use by-laws. Such a by-law is a zoning by-law to authorize the temporary use of land, buildings or structures for any purpose that is otherwise prohibited by the municipality's zoning. At times, it is in the public interest to permit lands to be used for a particular use on a temporary basis, even though the use may not comply with the Official Plan or zoning by-law. A TUBL must define the area to which it applies and specify the time-period in which it will be in force. Chapter 5.1.5 of the Official Plan addresses temporary use by-laws.

COMMENTS

Policy 1 of Chapter 3.5.1 of the Official Plan states that Toronto's economy will be nurtured and expanded by maintaining a strong and diverse economic base. The restaurant industry is an essential contributor to the life and vitality of Toronto's streets and has been particularly affected as a result of the COVID-19 pandemic closures.

Eating establishments and outdoor patios are permitted in the CR zone under the city-wide harmonized Zoning By-law 569-2013 and the former City of Toronto By-law 438-86. However, many eating establishments are currently unable to meet their standard patron capacity targets due to social distancing requirements of the COVID-19 pandemic.

When Council extended existing patio city-wide and site-specific TUBLs in March of 2021, it included a provision to consider further site-specific TUBLs subject to a series of circumstances, including that a patio under the CafeTO program is not possible. All the site-specific requests have applied for CaféTO curbside cafés. The four sites requesting additional rear yard and parking lot temporary patios have advised that they require additional patio capacity in order to ensure physical distancing is maintained for patrons and to meet their own standard patron capacity targets to stay remain in operation during the ongoing COVID-19 pandemic. Staff are of the opinion that adding temporary site-specific relief for rear patios in these instances is supportable, and does not cause undue impacts on the surrounding neighbourhoods, despite the possibility of a CafeTO curbside café in addition at the same addresses.

The proposed temporary patios that would be permitted by these by-laws are accommodated entirely on private property. A discussion of each proposed site is below:

1008-1010 Queen Street East

The request is to allow the existing rear outdoor patio to expand onto the adjacent property at 1010 Queen Street East currently occupied by the same eating establishment. Planning staff consider the request for the temporary use by-law appropriate given that the residential use is approximately setback 10 metres from the proposed outdoor space which is currently a surface parking space utilized by the commercial property.

1118 Queen Street East

The request is to allow a temporary patio to extend from the rear of the building. A private ROW accessed off Bertmount Avenue leads to a privately owned surface parking area for commercial properties municipally known as 1120, 1120 and 1124 Queen Street East. Planning staff consider the request for the temporary use by-law appropriate given that the proposed outdoor patio space is approximately 5 metres from the nearest residentially zoned property adjacent to a detached garage at 4 Bertmount Avenue.

1298 Queen Street East

The request is to allow a temporary outdoor patio to extend from the rear of the building. A public lane abuts the commercial properties fronting onto Queen Street East. The existing building is approximately 21 metres from the lot line abutting the R Zone, whereas the adjacent building to the west is setback 8.5 metres. Planning staff consider the request for the temporary use by-law appropriate given that the proposed outdoor

patio space is approximately setback 10 metres from the nearest residential property with an existing green wall on the west building.

106 -110 Broadview Avenue, 704 Queen Street East and 3 Hamilton Street
The proposed temporary outdoor patio is located offsite, approximately 41 metres west of The Broadview Hotel, on what is currently a privately owned parking lot for 704 Queen Street East and 3 Hamilton Street. The primary operator of the temporary outdoor patio will be The Broadview Hotel. The parking lot is located on a corner lot accessed by a flanking street. A public lane abuts the commercial properties fronting onto Queen Street East; in particular, there is a park north of the site bounded by the public lane and Thompson Street. Planning staff consider the request for the temporary use by-law appropriate given that site abuts a public lane and a park.

The proposed temporary use by-laws complements the CaféTO program by providing an opportunity for eating establishments to create temporary patio extensions on site or on a nearby site where it is appropriate, thereby shifting their capacity from indoor space to outdoor patios, as they adjust to physical distancing requirements related to the COVID-19 pandemic

The proposed TUBLs conform to the Official Plan by supporting an important economic sector on a temporary basis consistent with the requirements of the MZO and the CaféTO program. The patios are proposed to be subject to conditions, including closing the patio at 10 PM from Sunday to Thursday and 11 PM from Friday to Saturday and prohibiting amplified sound, to mitigate potential noise issues.

Conclusion

The proposed by-laws complement the existing CaféTO program by providing opportunities for new or expanded patios associated with eating establishments. The by-laws align with the CaféTO expiration date of April 14, 2022. Additional outdoor seating capacity will support the ability of these eating establishments to weather continued physical distancing and indoor dining prohibitions during the COVID-19 pandemic.

City Planning staff are recommending the attached site-specific TUBLs to allow outdoor patios at properties municipally known as 1008-1010 Queen Street East, 1118 Queen Street East, 1298 Queen Street East, 106-110 Broadview Avenue, 704 Queen Street East and 3 Hamilton Street.

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SIGNATURE

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ATTACHMENTS

Attachment 1: Draft Temporary Use By-law (1008-1010 Queen Street East)
Attachment 2: Draft Temporary Use By-law (1118 Queen Street East)
Attachment 3: Draft Temporary Use By-law (1298 Queen Street East)
Attachment 4: Draft Temporary Use By-law (106-110 Broadview Avenue, 704 Queen Street East and 3 Hamilton Street)