

345 Carlaw Avenue and 1180 Dundas Street East – Zoning Amendment – Final Report

Date: June 8, 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 premises to expand seating capacity outdoors, given COVID-related restrictions on indoor dining and gathering. 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 a restaurant or bar. Section 39 of the Planning Act provides authority to municipalities to pass TUBL.

The proposed TUBL described in this report would allow an outdoor patio at Crow's Theatre (345 Carlaw Avenue and 1180 Dundas Street East), on private property along the Carlaw Avenue frontage, with restrictions.

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

RECOMMENDATIONS

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

1. City Council enact the zoning by-law amendment substantially in accordance with Attachment 1 to the report from the Chief Planner and Executive Director, City Planning Division, dated June 8, 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 patio 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 management; and
 - d. there will be no outdoor music, performances and dancing, 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 amendment as may be required.

FINANCIAL IMPACT

The City Planning Division confirms that there are no financial implications resulting from the recommendations included in the report in the current budget year or in future years.

DECISION HISTORY

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.

On some properties where the City of Toronto Zoning By-law 569-2013 does not apply and the former municipal Zoning By-law remains in force, outdoor patio regulations may be more permissive than what is described above.

<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 TUBs, extending temporary permissions for outdoor patios for bars and restaurants as was previously done on October 27, 2020 and aligning their expiration with the CafeTO program (April 14, 2022). Previously approved site-specific TUBs were also extended to April 14, 2022.

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

At its meeting on May 5, 2021, City Council enacted four site-specific temporary use by-laws. By-laws 402-2021, 403-2021 and 405-2021 ease restrictions that relate to location and the required distance from residential zones for patios associated with three eating establishments: 1008-1010 Queen Street East, 1118 Queen Street East, and 1298 Queen Street East. By-law 404-2021 similarly eased restrictions for an eating establishment at 106-110 Broadview Avenue allowing 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. 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 are set to expire on April 14, 2022.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2021.MM32.37>

PROPOSAL

City Planning has received a request for a temporary outdoor patio at Crow's Theatre, located within the Streetcar Crowsnest development on the east side of Carlaw Avenue, north of Dundas Street East.

The proposed outdoor patio is on private property along the frontage of Carlaw Avenue. The site is adjacent to a restaurant, municipally known as 1190 Dundas Street East (Gare de l'est Restaurant), where an outdoor patio exists on the corner of Carlaw Avenue and Dundas Street East. The proposed outdoor patio will be operated and function as an accessory to Crow's Theatre Lobby Bar. The above noted properties are not part of the CaféTO program.

In response to the request, staff are proposing a temporary use by-law. The property is zoned I1 D3 (the "Industrial District") under the former City of Toronto Zoning By-law 438-86, which permits a variety of non-residential and employment uses. Under the Zoning By-law, conditions apply to outdoor patios when they are used in combination with a restaurant or take-out restaurant.

The site-specific temporary use by-law would be subject to restrictions prohibiting entertainment uses such as performances, music and dancing. The proposed by-law specifies 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 accessory to restaurants and bars (among other uses) and generally subordinate to indoor space.

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 and entertainment 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.

Crow's Theatre is a non-profit art and cultural organization, a theatre company that was founded in 1983. It functions as a concert hall and a place of assembly, employs local artists, contributes to the creative economy, and provides a local attraction. The theatre also includes a lobby bar located at grade. Since the beginning of the COVID-19 pandemic, Crow's Theatre has remained closed due to the limitations on indoor public gatherings. The theatre has suspended all scheduled performances and cancelled productions for 2020/2021.

The proposed outdoor patio would provide an opportunity for Crow's Theatre to open their lobby bar and animate the corner of Carlaw Avenue and Dundas Street East. The lobby bar meets the definition of a restaurant or bar as set out in O.Reg.345/20, to which the patio is an accessory. Staff are of the opinion that adding a temporary site-specific relief for an outdoor patio is supportable, and does not cause undue impacts on the surrounding residential neighbourhoods.

Restaurants or take-out restaurants and outdoor patios are permitted in the Industrial District under the former City of Toronto By-law 438-86. However, many restaurants, bars, concert halls and place of assembly are currently unable to meet their standard patron capacity targets due to social distancing and indoor gathering requirements of the COVID-19 pandemic.

The proposed TUBL complements the CaféTO program by providing an opportunity to create a temporary outdoor patio on site where it is appropriate, thereby allowing Crow's Theatre Lobby Bar to open by shifting their capacity from indoor space to outdoor patios, as they adjust to physical distancing and indoor gathering requirements related to the COVID-19 pandemic.

The proposed TUBL conforms 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 outdoor patio is 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, performances and dancing, to mitigate potential noise issues.

Conclusion

The proposed by-law complements the existing CaféTO program by providing an opportunity for an outdoor patio on site associated with Crow's Theatre. The by-law aligns with the CaféTO expiration date of April 14, 2022. This temporary use by-law will provide an opportunity for Crow's Theatre Lobby Bar to open, to support this business' ability to continue operations while meeting requirements related to the COVID-19 pandemic.

City Planning staff are recommending the attached site-specific TUBL to allow for an outdoor patio at the property municipally known as 345 Carlaw Avenue and 1180 Dundas Street East.

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SIGNATURE

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ATTACHMENTS

Attachment 1: Draft Temporary Use By-law (345 Carlaw Avenue and 1180 Dundas Street East)