

100 Indian Road – Zoning By-law Amendment – Final Report

Date: July 7, 2021

To: Toronto City Council

From: Chief Planner and Executive Director, City Planning

Ward: 4 - Parkdale-High Park

SUMMARY

This report reviews and recommends approval of a Temporary Use Zoning By-law ("TUBL") to permit additional outdoor patio space for the High Park Club, at 100 Indian Road.

On March 10, 2021, City Council extended the expiration date of City-wide Temporary Use Zoning By-laws ("TUBLs") to 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 would otherwise be prohibited by the City-wide Zoning By-law 569-2013. The purpose of the City-wide TUBL is to allow premises to expand seating capacity outdoors, given COVID-19-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 TUBLs that authorize outdoor patios associated with a restaurant or bar. Section 39 of the *Planning Act* provides authority to municipalities to pass TUBLs.

The proposed TUBL is consistent with the Provincial Policy Statement (2020), conforms with all relevant policies of the Growth Plan for the Greater Golden Horseshoe (2020), and all relevant policies of 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 25, 2021.

2. City Council direct that approval be subject to 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 P.M., from Sunday to Thursday, and 11 P.M., 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 or propped open while there is music or amplified sound inside.

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 that the Minister of Municipal Affairs and Housing provide expanded permission for patios on private properties in the City of Toronto to improve the economic health of the City so that such permissions achieve the following objectives:

- a. permitting surface outdoor patios in certain zones which permit eating establishments but not outdoor patios, subject to conditions to mitigate impact on nearby properties;
- b. removing restrictions in the Employment Industrial Zones of Zoning By-law 569-2013 which limit the amount of front yard an outdoor patio may occupy and which require a setback from the front lot line;
- c. allowing an outdoor patio to occupy space that would otherwise be required for parking; and,

d. increasing the permitted maximum area of surface outdoor patios ancillary to eating establishments, take-out eating establishments and recreations uses from the greater of 30 square metres or 30 percent of the interior floor area, to the greater of 50 square metres or 50 percent of the interior floor area.

The City Council Decision can be found here:

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

On July 2, 2020, the Province of Ontario issued Ontario Regulation 345/20, which exempts a by-law that would authorize the temporary use of land for a restaurant or bar patio under Section 39 of the *Planning Act* from subsections 34 (12) to (14.3), (14.5) to (15) and (19) of that Act and paragraphs 4 and 5 of subsection 6 (9) of Ontario Regulation 545/06. The effect of this regulation is that City Council may adopt a 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, the Ministerial Zoning Order ("MZO") expanding zoning permissions for outdoor patios in the City of Toronto, generally consistent with the June 29 and 30, 2020 request of City Council.

On October 27, 2020, City Council adopted a final report pertaining to TUBLs 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 City-wide Zoning By-law 569-2013 affecting outdoor patios. By-laws 906-2020 and 910-2020 were to expire on May 25, 2021. The City Council Decision can be found here:

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

On March 10, 2021, City Council adopted replacement City-wide TUBLs 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 TUBLs are set to expire on April 14, 2022.

Where the City-wide TUBL would not support a temporary patio, City Council also enabled staff to bring forward City-initiated Site-specific TUBLs to provide Site-specific zoning relief for outdoor patios located on private property, subject to certain conditions. The City Council Decision can be found here:

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

PROPOSAL

A request to temporarily expand the existing outdoor patio space has been made for the High Park Club located at 100 Indian Road on the west side of Indian Road, east of Parkside Drive and north of The Queensway.

The proposed outdoor patio space is intended to occupy a portion of the north parking lot, and the existing rear second storey partially-covered balcony, of the existing building onsite. Both locations are entirely within private property, and are not subject to the CaféTO program. The site has an existing licenced patio space on the rear covered ground floor verandah. The club intends to expand the licence to the proposed outdoor patio space.

The property is in a Residential Zone (R (d0.6) (x290)) under the City-wide Zoning By-law 569-2013. The High Park Club has lawful-nonconforming status as a curling club. Under the Zoning By-law, conditions apply to outdoor patios when they are used in combination with a bar, restaurant, or club.

The Site-specific TUBL would be subject to restrictions prohibiting entertainment uses such as performances, music and dancing. The proposed by-law specifies an expiration date of 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. Zoning By-law 569-2013 includes provisions that consider outdoor patios not to be primary land uses, but rather ancillary to restaurants and bars (among other uses including clubs) and generally subordinate to indoor space.

For most zones, regulations limit the maximum size of an outdoor patio to 30 square metres, or 30 percent of the interior floor area of the associated establishment, whichever is greater. In addition to the size limitation, zoning regulations manage the potential impact of the patio on nearby properties through setback requirements, rear-yard fencing requirements, a prohibition on entertainment, and limitations on outdoor patios located above the first storey (e.g. rooftop patios).

As discussed in the Background Section, a number of zoning regulations respecting outdoor patios have been eased since July 2020 as a result of an MZO.

Temporary Use By-laws

Section 39 of the *Planning Act* provides authority to municipalities to pass TUBLs to authorize the temporary use of land, buildings or structures for any purpose that would

otherwise be prohibited by the Zoning By-law. 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 TUBLs.

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 and has been particularly affected as a result of the COVID-19 pandemic closures.

The High Park Club functions as recreational curling, lawn tennis and occasional banquet hall, and provides a local attraction, which offers food and beverage services. Since the beginning of the COVID-19 pandemic, the club has suffered closures due to the limitations on indoor public gatherings.

The proposed outdoor patio space would provide an opportunity for the High Park Club to offer its food and beverage service with an increased capacity. The food and beverage service meets the definition of a restaurant or bar as set out in Ontario Regulation 345/20, to which the patio is an accessory. Staff are of the opinion that adding a temporary Site-specific relief for additional outdoor patio space is supportable, and does not cause undue impacts on the surrounding residential neighbourhood.

The proposed TUBL complements the CaféTO program by providing an opportunity to create additional temporary outdoor patio space on sites where it is appropriate, thereby allowing the High Park Club to operate 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 P.M., from Sunday to Thursday, and 11 P.M., on Friday to Saturday, and prohibiting amplified sound, performances and dancing, to mitigate potential noise issues.

Conclusion

City Planning staff recommend the approval of a Site-specific TUBL to allow the extension of the existing outdoor patio at the property municipally known as 100 Indian Road. The proposed TUBL complements the existing CaféTO program by providing an opportunity for an outdoor patio on site associated with High Park Club. The TUBL aligns with the CaféTO expiration date of April 14, 2022. The TUBL will provide an opportunity for the High Park Club to open offering its food and beverage service, to

support this club's ability to continue operations while meeting requirements related to the COVID-19 pandemic.

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SIGNATURE

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ATTACHMENTS

Attachment 1: Draft Temporary Use By-law (100 Indian Road)