

25 The West Mall – Sherway Gardens Temporary Outdoor Patio and Technical Amendment to By-law 198-2021 – Final Report

Date: July 13, 2021

To: City Council

From: Chief Planner and Executive Director, City Planning

Ward: 3 - Etobicoke-Lakeshore

SUMMARY

On March 10, 2021, City Council extended the expiration date of city-wide temporary use zoning by-laws ("city-wide TUBL") that ease restrictions on outdoor patios. A site-specific temporary use zoning by-law ("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 (the "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 described in this report would allow an outdoor patio at Sherway Gardens (25 The West Mall), on private property on the parking lot to the north of the site (see Attachment 1 for the location map), with restrictions.

The proposed by-law also includes a technical amendment to ensure that properties across the City that remain subject to the former municipal zoning by-laws benefit from the same intended easing of limitations on maximum outdoor patio size as City-wide Zoning By-law 569-2013, which is temporarily amended by By-law 197-2021. 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 2 to the report from the Chief Planner and Executive Director, City Planning Division, dated July 13, 2021.
2. 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 this 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 a Minister's Zoning Order ("MZO") made through Ontario Regulation 358/20, 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. The City Council Decision can be found here:

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

With the passing of the City's temporary by-laws 906-2020 and 910-2020, expanding zoning permissions for outdoor patio's in the City, the Minister's Zoning Order made through Ontario Regulation 358/20 was revoked on November 16, 2020.

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. The City Council Decision can be found here:

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

PROPOSAL

City Planning has received a request for a temporary outdoor patio at the Sherway Gardens shopping mall parking lot located south of the Queensway and east of The West Mall.

The proposed outdoor patio is on private property on the northwest corner of the site and north of the Cactus Club Café (see Attachment 1). Of the 6,000 parking spaces available for the site, the patio seating proposes to occupy 117 parking spaces. The subject area currently has outdoor seating without any food or beverage service allowing customers to enjoy their take-out.

The Cadillac Fairview Corporation - Sherway Gardens submitted a request to permit the outdoor patio to operate and function as an accessory to the restaurants within the Sherway Gardens mall, including, but not limited to, Cactus Club and Joey's. One third of the patio is planned to be converted into "Restaurant Zones" to allow restaurant tenants to have exclusive use of the area as an extension of their own limited outdoor patio. The majority of the existing outdoor seating will remain for the mall customers to use and not exclusive to a particular restaurant.

In response to the request, staff are proposing a temporary use by-law. The property is zoned CPR (Regional Planned Commercial) under the former City of Etobicoke Zoning Code, which permits a variety of non-residential and commercial 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 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.

The proposed by-law also includes a technical amendment to ensure that properties across the City that remain subject to the former municipal zoning by-laws benefit from the same intended easing of limitations on maximum outdoor patio size as City-wide Zoning By-law 569-2013, as temporarily amended by By-law 197-2021.

By-law 197-2021 allows outdoor patios to have a maximum area equal to the greater of: 50 square metres; or 50 percent of the interior floor area of the premises it is associated with. However, By-law 198-2021 which affects former municipal zoning by-laws, only allows for a maximum area of 50 square metres, which does not provide the same scaled benefit (a maximum outdoor patio area based on 50% of the premises) for larger indoor dining facilities. The proposed change would ensure By-law 197-2021 and 198-2021 share the same intent.

BACKGROUND

Zoning Restrictions on Private Patios

Outdoor patios on private property are regulated by zoning. The former City of Etobicoke Zoning Code describes three classes of restaurants: "convenience", "standard" and "take-out". A convenience restaurant is a take-out restaurant with a seating capacity exceeding 10 seats. A standard restaurant is a restaurant where meals are principally eaten at the same table or counter (same premises) where they are served and where outdoor dining is limited to designated seating areas. A take-out restaurant is a restaurant where meals are principally taken off the premises and accessory customer dining facilities are limited to 10 seats. An outdoor dining area located in the parking lot, and ancillary to more than one restaurant, does not meet the intent of these defined terms.

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.

Sherway Gardens is an important regional shopping facility that provides retail amenities to local and regional residents. There are 15 food court vendors, 7 specialty food vendors and 5 restaurants in the mall that make up approximately 100,000 square metres of gross floor area. For the majority of the COVID-19 pandemic, the food court has remained closed due to the limitations on indoor public gatherings.

The proposed outdoor patio would provide the opportunity for food vendors in Sherway Gardens to extend their patio space and accommodate additional customers while providing outdoor seating for the take-out only customers.

Restaurants or take-out restaurants and outdoor patios are permitted in the Regional Planned Commercial zone under the former City of Etobicoke Zoning Code. However, many restaurants, bars, concert halls and place of assembly are currently unable to

meet their standard patron capacity targets due to social distancing requirements and indoor gathering restrictions during the COVID-19 pandemic.

The proposed TUBL complements the CaféTO program by providing an opportunity to create a temporary outdoor patio onsite where it is appropriate, thereby allowing food vendors and restaurants in Sherway Gardens to open by shifting their capacity from indoor space to outdoor patios.

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 prohibiting amplified sound, performances and dancing, to mitigate potential noise issues.

Conclusion

City Planning staff are recommending the attached site-specific TUBL to allow for an outdoor patio at the property municipally known as 25 The West Mall. The proposed by-law complements the existing CaféTO program by providing an opportunity for an outdoor patio on-site associated with the food vendors in the Sherway Gardens shopping centre. The by-law aligns with the CaféTO expiration date of April 14, 2022. This temporary use by-law will help support the restaurants and food vendors in Sherway Gardens by providing the ability for them to continue operating while meeting requirements related to the COVID-19 pandemic. 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 neighbourhoods.

The proposed by-law also includes an city-wide technical amendment to ensure that properties that remain subject to the former municipality zoning by-laws benefit from the same intended easing of limitations on maximum outdoor patio size as City-wide Zoning By-law 569-2013, which is temporarily amended by By-law 197-2021. Staff recommends amending By-law 198-2021 to also permit a maximum outdoor patio area equal to the greater of 50 square metres or 50 percent of the interior floor area of the premise it is associated with, consistent with By-law 197-2021.

CONTACT

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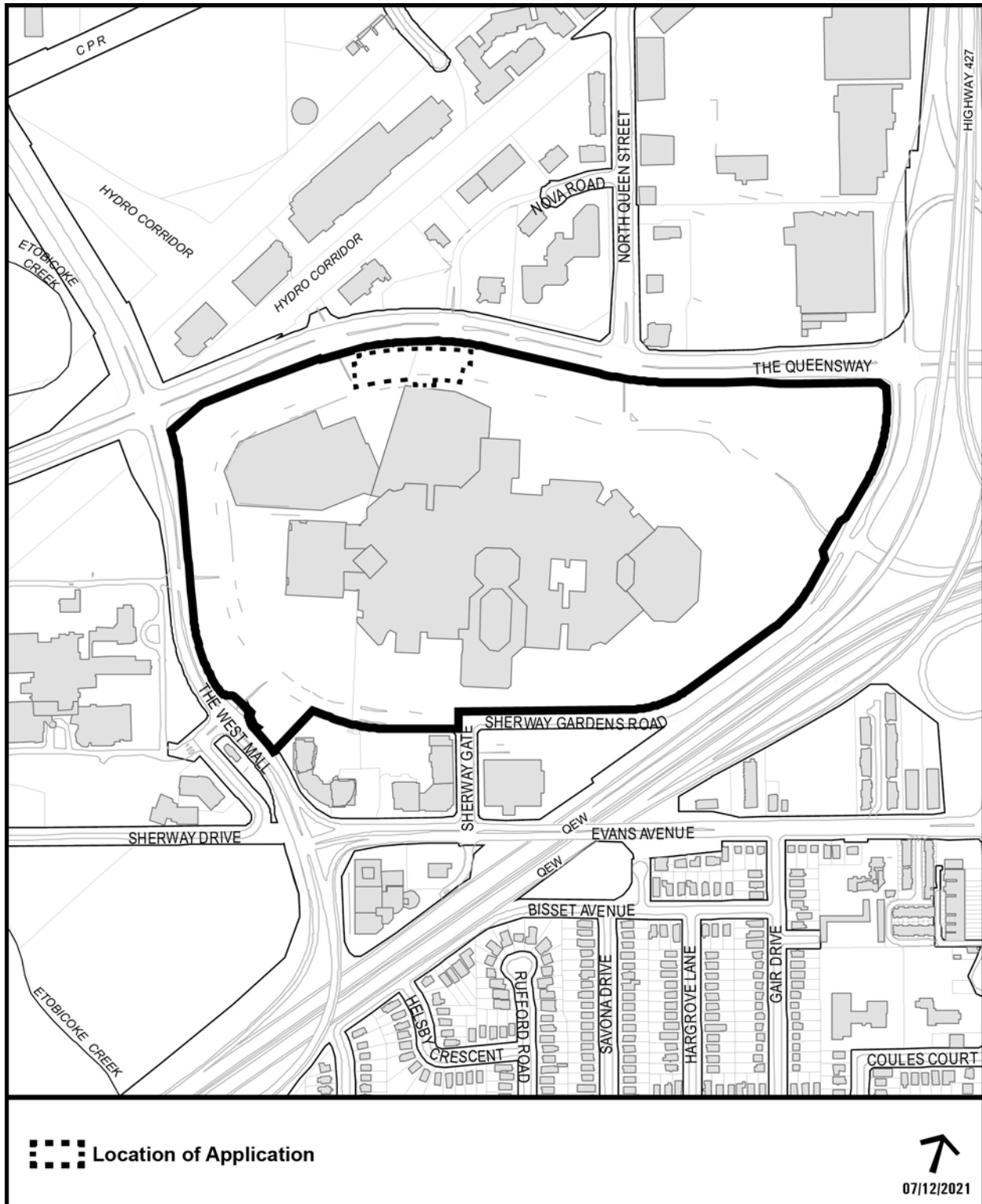
SIGNATURE

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

ATTACHMENTS

Attachment 1: Proposed Patio Location
Attachment 2: Draft Temporary Use By-law

Attachment 1: Proposed Patio Location at 25 The West Mall



Attachment 2: Draft Temporary Use By-law
Submitted as a separate attachment