

## **Temporary Use Zoning By-laws to Provide an Extension to Existing Temporary Permissions for Outdoor Patios for Bars and Restaurants**

**Date:** February 16, 2021

**To:** Planning and Housing Committee

**From:** Chief Planner and Executive Director, City Planning

**Wards:** All

### **SUMMARY**

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This report recommends an extension to the existing temporary use by-laws pursuant to Section 39 of the Planning Act to ease zoning restrictions on outdoor patios associated with eating establishments, take-out eating establishments and recreation uses. The current city-wide temporary use by-laws in effect will expire on May 25, 2021.

Preparation and planning by business owners for outdoor patios typically occurs in the first quarter, and providing an extension to the existing by-laws will provide certainty to operators of these establishments. The proposed by-laws will continue to complement the existing CaféTO program to allow expanded patios on City boulevards and rights-of-way and the by-laws match the time-frame of the program.

Two city-wide replacement by-laws are proposed to take effect upon Council approval, at which time the existing by-laws would be repealed. The contents of each by-law will remain the same, with the only change being a new expiration date of April 14, 2022. One temporary use by-law is proposed as an amendment to harmonized city-wide Zoning By-law, 569-2013. The second temporary use by-law will address properties that remain subject to the former municipal zoning by-laws.

The by-laws will continue to allow an increase to the maximum size of outdoor patios and would remove restrictions that might prevent an outdoor patio located in front of buildings. The by-laws are proposed to expire on April 14, 2022, to coincide with the proposed end of the CaféTO program.

In addition to the city-wide temporary use by-laws that modified zoning performance standards for patios, five site-specific temporary use by-laws were enacted with expiration dates of May 25, 2021. These five site-specific temporary by-laws also require an extension to April 14, 2022.

The proposed by-laws are consistent with the Provincial Policy Statement (2020) and conforms with A Place to Grow: Growth Plan for the Greater Golden Horseshoe (2019).

## RECOMMENDATIONS

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The City Planning Division recommends that:

1. City Council enact zoning by-law amendments with respect to city-wide zoning permissions for outdoor patios substantially in accordance with Attachments 1 to 7.
2. City Council direct the City Solicitor to make such stylistic and technical changes to each zoning by-law amendment as may be required.
3. City Council direct the City Solicitor and appropriate staff to attend and support the temporary use by-laws in their current form, should either be appealed to the Local Planning Appeal Tribunal within the statutory time-frame of the Planning Act.

## FINANCIAL IMPACT

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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

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### Existing CaféTO Program and Requested Extension

A report titled "CaféTO - Increasing Outdoor Dining Space for Toronto Restaurants and Bars", dated June 8, 2020, was submitted for consideration by the Executive Committee at its meeting on June 22, 2020. The report provided a package of recommendations that collectively paused certain elements of Chapter 742 of the Municipal Code (Sidewalk Cafés, Parklets and Marketing Displays), which sets out a permitting system for sidewalk and curb lane/parklet cafés. The goal of the CaféTO program is to support local restaurants and bars and their employees by allowing the expeditious and wide-spread roll-out of café extensions in the public right-of-way, during an expected period of time when they will be under considerable occupancy constraints.

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

At its meeting on June 29, 2020, City Council enacted By-law 452-2020, which amended City of Toronto Municipal Code Chapter 742, Sidewalk Cafés, Parklets and Marketing Displays, and City of Toronto Municipal Code Chapter 937, Temporary Closing of Highways to permit sidewalk cafés, curb lane/parklet cafés and public parklets and to permit café extensions as part of the CaféTO program with an expiration date of November 15, 2020.

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

At its meeting on October 27, 2020, City Council enacted By-law 927-2020, which provided an extension of the CaféTO program to April 14, 2021.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2020.EX17.7>

At its meeting on February 5, 2021, City Council considered and adopted an extension of the CaféTO program to April 14, 2022 and to permit curb lane/parklet cafés until November 10, 2021.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2021.EX20.6>

## **Regulations Regarding Patios on Private Property**

City Council requested, at its meeting on June 29, 2020, that the Minister of Municipal Affairs and Housing provide expanded permissions for patios on private properties with regards to zone restrictions, placement and surface area. On July 2, 2020, the Province of Ontario issued Ontario Regulation 345/20, which exempts the enactment of 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. Ontario Regulation 345/20 permits City Council to adopt temporary use by-laws 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.

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

On July 8, 2020, the Province of Ontario issued Ontario Regulation 358/20, being Ministerial Zoning Order 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 will expire on May 25, 2021.

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

## **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 provided an extension to the three site-specific temporary use by-laws located at 229 Richmond Street West, 1012-1018 Gerrard Street East and 95-107 Danforth Avenue and 749 Broadview Avenue that were enacted at its meeting on July 28, 2020, as part of the report which modified zoning performance standards for patios more generally. The replacement site-specific by-laws have an expiry date of May 25, 2021.

<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 will 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 will expire on May 25, 2021.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2020.MM27.28>

## **PROPOSAL**

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Staff are proposing new temporary use by-laws to replace the existing by-laws that expire on May 25, 2021. The purpose of the by-laws remains the same, which is to ease restrictions on outdoor patios located on private property associated with eating establishments, take-out eating establishments, and recreation uses. No new or modified standards are contained in the by-laws, and only the expiry date will change. The proposed by-law specifies a new 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.

Staff also propose extensions of the five site-specific temporary use by-laws, which also eased restrictions on outdoor patios on private property. These by-laws will expire on May 25, 2021. A new expiration date of April 14, 2022 is proposed.

## **BACKGROUND**

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### **Existing CaféTO Program and Requested Extension**

The existing CaféTO program provides space for expanded outdoor dining areas to help

eating establishments which were impacted by COVID-19. The program provides more outdoor dining areas to assist with physical distancing requirements for patrons on patios. The existing CaféTO program accommodates increased patio permissions on sidewalks and curb lanes within the municipal right-of-way. The program does not address the portion of patios located on private property.

By-law 452-2020 was enacted by City Council on June 29, 2020. The by-law amended Chapter 742 and 937 of the Municipal Code to form the basis of the current CaféTO program which was set to expire November 15, 2020. By-law 927-2020 provided an extension of this program to April 14, 2021.

Item EX20.6 titled "CaféTO and CurbTO - Pandemic Response Programs", which was adopted by City Council on February 5, 2021, recommended an extension of the program to permit sidewalk cafés to April 14, 2022 and to permit curb lane/parklet cafés until November 10, 2021.

### **Zoning Regulations on Private Patios**

Outdoor patios on private property are regulated by zoning. Harmonized city-wide Zoning By-law 569-2013 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 are limited to many (but not all) zones where eating establishments and take-out eating establishments are permitted. For most zones, regulations limit the maximum size of an outdoor patio to 30 square metres or 30 per cent 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).

Patios located on Privately Owned Publicly-Accessible Spaces (POPS) are also regulated by zoning. POPS are also typically secured through legal agreements registered on title of the subject property, which may restrict the use of a POPS for a private outdoor patio, notwithstanding zoning permissions.

### **Temporary Use By-laws**

Section 39 of the Planning Act provides authority to municipalities to pass temporary use by-laws. A temporary use 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. The City's urban structure, land use designations and development criteria, as specified in the Official Plan, inform the current performance standards for outdoor patios as found in the harmonized city-wide Zoning By-law 569-2013. 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 marginally vary from the Official Plan or zoning by-law. A temporary use by-law must define the area to which it applies and specify the time period in which it will be in force.

## **Existing Temporary Use By-laws**

City-wide temporary use By-laws 906-2020 and 910-2020 ease restrictions for patios located on private property associated with eating establishments, take-out eating establishments, and recreation uses with regard to zone restrictions, placement and surface area.

Site-specific By-law 907-2020 permits an outdoor patio at 95-107 Danforth Avenue and 749 Broadview Avenue, which does not otherwise comply with the setback requirement from nearby properties in a residential zone.

Site-specific By-law 908-2020 permits an outdoor patio at 229 Richmond Street West, which would otherwise not be permitted because the eating establishments which that operate the patio are not located on the same property.

Site-specific By-law 909-2020 permits an outdoor patio at 1012-1018 Gerrard Street East, which would otherwise not be permitted because the eating establishments which that operate the patio are not located on the same property.

Site-specific By-law 1063-2020 permits an outdoor patio at 94 The Esplanade to support the eating establishment at 67 Front Street East, which would otherwise not be permitted because the eating establishment which operates the patio is not located on the same property.

Site-specific By-law 1182-2020 permits an outdoor patio at 139-141 Danforth Avenue, which does not otherwise comply with the setback requirements from nearby properties in a residential zone.

These by-laws will expire on May 25, 2021.

## **Public Meeting Comments**

With regard to the existing by-laws in effect which are set to expire on May 25, 2021, no written submissions or oral deputations from members of the public were submitted to the Planning and Housing Committee at its meeting on October 20, 2020. In making their decision with regard to the extension of the temporary use by-laws in effect, Council members will once again have the opportunity to review written submissions and hear live-streamed deputations, should they be made, at the public meeting held by the Planning and Housing Committee on March 2, 2021.

## **COMMENTS**

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### **Need for Extension**

The purpose of the by-laws is to assist businesses in their planning and preparation for outdoor patios beyond May 25, 2021. Planning and preparation for outdoor patios typically occurs in the first quarter of the year, and establishing a new expiration date of

April 14, 2022 will provide certainty to eating establishments, take-out eating establishments and recreation uses. This action is necessary as the regulatory environment and restrictions in place due to the COVID-19 pandemic will likely persist well into the year.

### **Community Consultation**

Due to time constraints and the physical distancing requirement associated with COVID-19, the usual in-person community consultation program has not been conducted with respect to the extension of the existing temporary use by-laws.

### **Outdoor Patio Construction and Expansion in 2020 and Early 2021**

Building permits for outdoor patios are only required where the outdoor patio has a raised floor that is more than 0.6 metres above the ground, has a tent (generally having an aggregate area of more than 60 square metres) or has a roof type structure. Most outdoor patios are not raised and are not covered by a structure. Therefore, data is not available as to how many establishments have constructed new outdoor patios or expanded existing outdoor patios on private property as a result of the existing temporary use by-laws.

## Conclusion

The existing temporary use by-laws to ease restrictions for patios on private property will expire on May 25, 2021. To allow for greater certainty and to assist businesses with planning for increased patio capacities, due to potential indoor occupancy restrictions based on public health regulations, it is necessary to introduce new temporary use by-laws with a new expiration date. No changes to the existing modification of performance standards for patios is proposed. The only change in the proposed by-laws is a new expiration date of April 14, 2022. The by-laws complement the existing CaféTO program by providing opportunities for new or expanded patios associated with eating establishments, take out eating establishments, and recreation uses. The by-law also matches the proposed CaféTO expiration date of April 14, 2022.

City Planning also recommends an extension to the five site-specific temporary use by-laws that will expire on May 25, 2021, to provide the same level of certainty for business operators to plan for continued patio operations. A proposed expiration date of April 14, 2022 is proposed to align with the proposed expiration dates of CaféTO and the city-wide temporary use by-laws for patios.

## CONTACT

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## SIGNATURE

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Chief Planner and Executive Director  
City Planning Division



## **ATTACHMENTS**

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Attachment 1: Draft Temporary Use By-law (Harmonized City-wide Zoning By-law 569-2013)

Attachment 2: Draft Temporary Use By-law (former municipal zoning by-laws)

Attachment 3: Draft Temporary Use By-law (95-107 Danforth Avenue and 749 Broadview Avenue)

Attachment 4: Draft Temporary Use By-law (229 Richmond Street West)

Attachment 5: Draft Temporary Use By-law (1012-1018 Gerrard Street East)

Attachment 6: Draft Temporary Use By-law (67 Front Street East and 94 The Esplanade)

Attachment 7: Draft Temporary Use By-law (139-141 Danforth Avenue)