

Updating the permit process for Flankage Café Permits in response to EX9.18

Date: November 7, 2023
To: City Council
From: Executive Director, Municipal Licensing and Standards
Wards: All

SUMMARY

On October 31, 2023, Executive Committee via item [2023.EX9.18](#) directed the Executive Director, Municipal Licensing and Standards Division (MLS) to report directly to the November 8, 9, 10, 2023 meeting of City Council with the required bylaw amendments specific to flankage patios, to re-introduce provisions deleted by City Council in 2021 from Chapter 742, Sidewalk Cafes and Marketing Displays, which included a process for notice and the authority for the Executive Director, Municipal Licensing and Standards to refuse an application for a sidewalk café based on receiving objections and an appeal process to community council, where conditions could be added to the permit.

In response to direction from Executive Committee, this report describes bylaw amendments similar to those that were previously removed from Chapter 742, Sidewalk Cafés, Parklets and Marketing Displays in 2021, which required MLS to refuse an application that received objections from two or more members of the public during the 21-day period of public notice. These previous provisions triggered an appeal process (if the applicant chose to appeal the refusal), which required staff to report to Community Council where Councillors could decide to uphold the permit refusal, or add conditions to the permit. If these previous provisions are reinstated, this requirement and appeals process would apply to new flankage café permit applications.

The changes proposed for reinstatement were removed in 2021 to streamline the process and reduce the burden on permit applicants. Specifically, in October 2021 via the [CaféTO 2022 and Beyond report](#), Council-approved recommendations removed provisions that established multiple objections from the public as grounds to refuse a café permit application in order to streamline the sidewalk café application process. Staff found refusals initiated by objections from the public, and subsequent appeals and reports to Community Council, resulted in extra burden on permit applicants and more administrative steps to the café permit applications process. In the [CaféTO 2023 and Beyond report](#) from February 2023, staff reiterated its support for maintaining the

changes made in 2021, noting that they did not recommend further requirements to report to Community Council during the café application process.

This report was prepared in consultation with Transportation Services and Economic Development & Culture (EDC).

RECOMMENDATIONS

As directed by Executive Committee item [2023.EX9.18](#), the Executive Director, Municipal Licensing and Standards recommends that City Council:

1. Amend City of Toronto Municipal Code, Chapter 742, Sidewalk Cafés, Parklets and Marketing Displays, to re-establish specific provisions deleted by Council in October 2021 and apply them specifically to sidewalk cafés in flankage areas, such that:

a. A new section 742-2.3 is added to provide application notice requirements as follows:

Notice, permit areas on local roads

A. Upon receipt of a complete application for a flankage café, the Executive Director or General Manager, in the case of public parklets, will notify the following people or entities:

1. the Applicant;
2. the local Ward Councillor;
3. the local Business Improvement Area, if any;
4. any resident associations registered with the City Clerk that includes the proposed café location within its area of representation; and
5. all property owners and occupants located within a 60-metre radius of the proposed café location.

B. All applicants for flankage cafés must display a notice of the application in a form, size and location satisfactory to the Executive Director on the associated establishment for no less than 21 days commencing on a date specified by the Executive Director

b. the following subsection A(2) is added to section 742-3.2. Refusal as a grounds for refusing a permit application:

Refusal

(2) in the case of an application for a flankage café, the City receives multiple objections to the application from members of the public during the 21-day period of public notice;

c. the following subsection B(2) is added to section 742-4.3. Appeals to Community Council as a group that would receive notice of any appeal:

Appeals to Community Councils

(2) Any person who submitted an objection to the application.

2. Amend City of Toronto Municipal Code, Chapter 742, Sidewalk Cafés, Parklets and Marketing Displays to add the following definition:

a. Flankage Café: a sidewalk café located on the sidewalk or boulevard along the local road that is adjacent to a corner business unit.

FINANCIAL IMPACT

There is no financial impact resulting from this report.

The Interim Chief Financial Officer and Treasurer has reviewed this report and agrees with the financial implications as identified in the Financial Impact section.

DECISION HISTORY

On October 31, 2023, City Council forwarded [EX9.18 - Requesting an Update on EX27.10 With Respect to Applying Conditions to CaféTO Licences for Flankage Patios](#) to the November 8, 9 and 10, 2023 meeting of City Council. In doing this, Executive Committee directed MLS to provide Council with the required bylaw amendments specific to flankage patios, to re-introduce provisions deleted by City Council in 2021 from Chapter 742, Sidewalk Cafes and Marketing Displays, which included a process for notice and the authority for the Executive Director, Municipal Licensing and Standards to refuse an application for a sidewalk café based on receiving objections and an appeal process to Community Council, where conditions could be added to the permit.

On February 7, 2023, City Council adopted [EX2.4 - CaféTO 2023 and Beyond](#). Council amended Chapter 742, Sidewalk Cafés, Parklets and Marketing Displays, which included changes to the requirements and permissions for the permitting of curb lane cafés. The report also outlined staff's delegated authority to issue sidewalk café permits without having to report to Community Council, except for a few instances.

On November 9, 2021, City Council adopted [EX27.10 CaféTO 2022 and Beyond](#). Council directed Transportation Services, MLS and EDC to report back to the Executive Committee by the first quarter of 2023 to update Chapter 742, Sidewalk Cafés, Parklets and Marketing Displays, to align with some of the temporary CaféTO program elements as staff reported widespread support for the program amidst the COVID-19 pandemic. Council also adopted the report's recommendations, including removing provisions which established a process for notice and the requirement for MLS to refuse applications for sidewalk cafés based on receiving objections from the public.

COMMENTS

Current Process for Applying Conditions on Flankage Café Permits

Currently, staff issue sidewalk café permits in accordance with delegated authority in Chapter 742. This process does not generally require a report to Community Council. However, in Chapter 742, there are a few instances where staff would report to Community Council.

Under Chapter 742, Article 4, if a café application is refused by staff, an applicant has 14 days to request an appeal. If the grounds of appeal include the location, design and safety of a curb lane café or public parklet, or a failure of a sidewalk café to meet pedestrian clearway requirements under Chapter 742, those aspects of the appeal are considered by the General Manager, Transportation Services. If the appeal is made for other reasons, a report is brought to Community Council for its consideration.

On hearing an appeal, Community Council can uphold the rejection of the application or allow the appeal and approve the application, either with or without conditions.

Currently, under Article 13 of Chapter 742, staff may also report to Community Council if staff have suspended a permit for reasons including non-compliance with a permit agreement, Chapter 742 or other applicable law and/or feel Community Council should consider revoking a permit.

On receiving such a report, Community Council may decide to revoke the permit, add conditions to the permit or take such other action as it may direct. If Community Council cancels a permit, the permit holder is not eligible to apply for a new permit for a year following the cancellation.

The clauses described above allow Community Council to impose conditions on a permit or suspend or cancel the permit of an establishment if deemed appropriate. Outside of these clauses, Community Councils have never had a direct power to add conditions or oversee the issuances of any café permit as part of the application process. In its [CaféTO 2023 and Beyond report](#), staff did not recommend further requirements to report to Community Council during the café application process. Such a requirement would significantly extend the timeline between applications and permit issuance for businesses and require additional staff resources to manage.

Applying Conditions on Flankage Café Permits based on Objections from the Public

On October 31, 2023, Executive Committee via item [2023.EX9.18](#) directed staff to report to the November 8, 9, and 10, 2023 meeting of City Council with the required bylaw amendments specific to flankage patios, to re-introduce provisions deleted by City Council in 2021 from Chapter 742, Sidewalk Cafes and Marketing Displays, which included a process for notice and the authority for the Executive Director, Municipal Licensing and Standards to refuse an application for a sidewalk café based on receiving

objections and an appeal process to Community Council, where conditions could be added to the permit.

To address this, this report outlines amendments similar to those that were previously removed from Chapter 742, which would require MLS to refuse an application if it received two or more objections during the 21-day period of public notice. This would trigger an appeal process (if the applicant chose to appeal the refusal) which would require staff to report to Community Council where the Community Council could decide to uphold the permit refusal or add conditions to the permit.

To align with the direction from Executive Committee, the recommended provisions would apply to new flankage café permit applications only. "Flankage" areas are permit areas located on a local road. This is different from the provisions removed in 2021 which applied to new permit applications for all locations of cafés.

Current avenues for Community Council to apply conditions on all types of café permits would continue to be available (e.g., appeals triggered by a permit suspension due to non-compliance, appeals triggered by a rejected permit application failing to meet bylaw requirements, etc.).

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SIGNATURE

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