

City of Mississauga  
**Corporate Report**



<p>Date: October 22, 2021</p> <p>To: Chair and Members of Planning and Development Committee</p> <p>From: Andrew Whittemore, M.U.R.P., Commissioner of Planning &amp; Building</p>	<p>Originator's files:          CD.21-TEM (All Wards)          and CD.21-SPE (All Wards)</p>
	<p>Meeting date:          November 15, 2021</p>

## Subject

### **PUBLIC MEETING INFORMATION/RECOMMENDATION REPORT (ALL WARDS)**

#### **Temporary Patio and Temporary Outdoor Businesses Programs**

**Files: CD.21-TEM and CD.21-SPE**

## Recommendation

1. That the proposed amendments to the by-laws and the waiver of fees, outlined in Appendix 4 of the report dated October 22, 2021, from the Commissioner of Planning and Building related to temporary outdoor patios and temporary outdoor businesses to allow them to operate until December 31, 2022, be approved, and that the necessary implementing by-laws be brought to a future City Council meeting.
2. That the Planning and Building Department report back on public submissions received and make recommendations on permanent regulations for patios and/or outdoor recreational/entertainment establishments.

## Executive Summary

- The temporary use by-laws for outdoor patios and outdoor businesses need to be extended to continue to support Mississauga's businesses to the end of 2022.
- Planning and Building Department staff are considering options for the long-term regulation of patios and/or outdoor recreational/entertainment establishments.
- Consultation with relevant businesses and the public will be conducted prior to a recommendation report on the long-term regulations being brought before the Planning and Development Committee in 2022.

## Background

### TEMPORARY OUTDOOR PATIO PROGRAM

To support the restaurant industry in Mississauga during the COVID-19 pandemic, on July 8, 2020, Council passed Temporary Use By-law 0163-2020 to permit temporary outdoor patios accessory to restaurants, convenience restaurants and take-out restaurants in certain zones until December 31, 2020. An extension was subsequently approved by Council on November 11, 2020 through Temporary Use By-law 0233-2020 to permit the use until December 31, 2021. Reports associated with those approvals are included as Appendix 2 to this report.

To date, 24 patio permits have been approved to allow temporary patios on a public right-of-way. Since temporary patios on private lands do not require a patio permit, it is difficult to determine the total number of temporary patios across the City. However, approximately 100 inquiries were received regarding the temporary patio program, which indicates significant interest and success with the program.

### PORT CREDIT CULTURAL NODE PATIO PROGRAM

Patios and retail sales are currently permitted on the public sidewalks and lay-by parking areas in Port Credit through the Port Credit Cultural Node project. Minor variance approval was originally granted in 2011 to permit the uses on a temporary basis, and based on its success, approval was subsequently renewed in 2012 and again in 2017. The current approval is set to expire on April 30, 2022. Separate approvals are required for wood structures through an encroachment agreement, which are not granted on a permanent basis, and only permit the encroachments between April 15 and October 15.

### TEMPORARY OUTDOOR BUSINESSES PROGRAM

Apart from restaurants and patios, other businesses in Mississauga have expressed interest in operating outdoors, allowing for greater ability to physically distance. Examples include drive-in movie theatres, outdoor bingo halls and outdoor retail sales. Council passed Temporary Use By-law 0307-2020 on December 9, 2020 to permit temporary outdoor retail sales and temporary outdoor recreational/entertainment establishments in most commercial, Downtown Core, employment and open space zones until December 31, 2021. Reports associated with that approval are included as Appendix 3 to this report.

## Comments

### EXTENSION OF TEMPORARY PATIO AND TEMPORARY OUTDOOR BUSINESSES PROGRAMS

On July 16, 2021, the Province of Ontario entered Step 3 of the Roadmap to Reopen Plan, which resulted in a number of indoor and outdoor activities being permitted or permissions being altered. Indoor dining was permitted to resume, and on October 25, 2021 capacity limits were lifted for the majority of businesses requiring proof of vaccination, including restaurants and bars without dance floors. However, due to personal preferences of patrons, it may be advantageous

for restaurant owners to continue offering patio services outdoors. The Province has indicated that on November 15, 2021, it intends to further lift capacity limits in remaining businesses where proof of vaccination is required, including food or drink establishments with dance facilities.

Continuing to support businesses in Mississauga beyond the end of 2021 given the uncertainty of the impacts of the pandemic remains important. Staff are recommending that both of the temporary use by-laws for patios and outdoor businesses be extended for an additional year, expiring at the end of 2022. No changes are proposed to any of the previously approved temporary zoning regulations as they apply to these uses. However, the permitted zones are proposed to be slightly expanded to ensure that the Port Credit Cultural Node patio program is captured within the new temporary use by-laws. The encroachment agreement/patio permit programs will continue to apply if uses are being proposed in the public right-of-way. In addition, amendments to various City by-laws will be required to further extend waiving of fees or other requirements.

### **Temporary Outdoor Patio Program**

Ontario Regulation 345/20, made under the *Reopening Ontario (A Flexible Response to COVID-19) Act 2020*, exempted temporary use by-laws related to patios from the requirements for providing public notice and holding a statutory public meeting.

The following are the by-laws that will require amendments for the temporary patio program. Details regarding the amendments are outlined in Appendix 4.

- Zoning By-law 0225-2007
- Prohibit Sale of Goods on Highways By-law 0127-1995
- Encroachment By-law 0057-2004
- Business Licensing By-law 0001-2006
- Noise Control By-law 0360-1979
- Building By-law 0203-2019
- User Fees and Charges By-law 0156-2019

For the temporary patio program, applicable fees under the User Fees and Charges By-law 0251-2020 were waived. The waiver of such fees will also be incorporated into the 2022 User Fees and Charges By-law which will replace the current by-law and is expected to be approved by Council before the end of 2021.

### **Temporary Outdoor Businesses Program**

The temporary use by-law to extend the permissions for temporary outdoor retail sales and display and temporary outdoor recreational/entertainment establishments requires public notice, the holding of a statutory public meeting and is subject to potential appeal. The public meeting on November 15, 2021 fulfills the statutory requirements under the *Planning Act*.

In addition to the temporary use by-law, temporary outdoor retail sales and display and temporary outdoor recreational/entertainment establishments were given similar exemptions from the application of the above-noted City By-laws through the enactment of By-law 0306-2020. This by-law will be amended to extend the current repeal date of December 31, 2021 to December 31, 2022.

Public complaints regarding temporary patios or temporary outdoor businesses have been minimal during the pandemic. Only nine of the 1,400 noise complaints that were received by the City from October 2020 to September 2021, mention patios.

### **REGULATION OF PATIOS AND OUTDOOR BUSINESS ACTIVITIES ON A PERMANENT BASIS**

Given the success of the temporary use by-laws, staff are considering more permanent changes to the regulation of patios, and/or outdoor recreational/entertainment establishments, including the patio program in Port Credit. Before the temporary use by-laws, none of the aforementioned outdoor uses were permitted in the City, with the exception of patios in some of the Downtown Core zones, and some site-specific permissions such as Port Credit.

Staff are reviewing the following options.

#### **Option 1: Allow the temporary use by-laws to expire with no changes**

The City can return to the regulations that applied before the pandemic, with none of the uses being permitted outdoors. Any request would be required to apply for a rezoning or minor variance application to permit the uses.

#### **Option 2: Allow temporary patios, and/or temporary recreational/entertainment establishments to continue permanently**

Except for temporary outdoor retail sales, the City can allow all of the uses that are currently permitted through the temporary use by-laws beyond 2022. The uses would still be limited to those being temporary in nature (i.e. can be easily removed or relocated and do not include permanent structures). The City could consider a licensing regime to regulate the number of days in a calendar year that they are permitted to operate. Staff will assess and monitor the effect on the more permissive parking regulation and may recommend further changes accordingly. In particular, staff are considering the impact to public on-street parking in the Business Improvement Area (BIA) districts and the Downtown, which may be significant if parking activity returns to pre-pandemic levels.

#### **Option 3: Allow permanent patios**

Unless it is located in one of the permissive Downtown Core zones, restaurants seeking a permanent on-site patio normally require a minor variance. This process allows public consultation and for the Committee of Adjustment to review the proposal and impose conditions of approval that may mitigate any impacts of the patio. These conditions include limitations on hours of operation, length of approval and/or music.

To mitigate anticipated impacts, staff will consider introducing a minimum separation distance from patios to residential zones similar to the 60 m (197 ft.) separation between restaurants and residential zones. Permanent patios located in parking areas may require a reduced parking rate since the patio would permanently reduce the supply of parking available on site.

Permanent patios may be required to obtain site plan approval. Business owners will be required to enter into an encroachment agreement with the City on any patio within the City's right-of-way. The City's Noise By-law and Property Standards By-law will continue to help address any related nuisance or maintenance related complaints.

Permanent patio structures are not being considered for public on-street parking spaces. The only consideration for the public right-of-way would be on a municipal sidewalk where there is adequate width to accommodate such a facility.

### **LAND USE POLICIES AND REGULATIONS**

Appendix 1 contains relevant policies from the *Provincial Policy Statement (PPS)*, *Growth Plan for the Greater Golden Horseshoe (Growth Plan)*, the Region of Peel Official Plan (ROP) and Mississauga Official Plan (MOP) as they apply to the proposed temporary use by-laws. MOP contains policies regarding support for economic activities, distinct local communities and cultural identities, active public realms, and encouraging retail uses in Intensification Areas. Further, Section 19.9.1 of MOP contains specific policies in regards to temporary use by-laws, including criteria and conditions.

Upon review of the relevant policies, Planning and Building staff are of the opinion that the extension of the temporary use by-laws for outdoor patios, outdoor retail sales and outdoor recreational/entertainment establishments conform to MOP including the criteria for a temporary use by-law, represent good planning, and should be approved.

### **Engagement and Consultation**

Should the extensions to the temporary use by-laws be approved, communications staff will coordinate appropriate messaging to affected businesses, and the City's website will be revised to reflect the changes. Staff can also modify the website to receive public input on the potential long-term regulation of patios and outdoor recreational/entertainment establishments. Engagement will include local BIAs, the Mississauga Board of Trade (MBOT), Mississauga Tourism and Restaurants Canada.

### **Financial Impact**

Both the temporary patio and temporary outdoor businesses programs were intended to assist local businesses to offset loss of revenue during the pandemic. A number of City fees have, and will continue to be waived as part of the extension of the temporary programs.

The main financial impact will be continued reallocation of staff time to continue the implementation of the programs, decreased revenue due to occupied paid parking spaces, potential increased enforcement and increased cost of winter maintenance.

Depending on the City's approach to the long-term regulation of outdoor uses, the financial impacts and required staff resources will vary.

## Conclusion

In summary, the proposed extension of the temporary use by-laws for outdoor patios and outdoor businesses are consistent with good planning. Continuing to support Mississauga's businesses as the pandemic continues beyond 2021 will contribute to the City's recovery and should be approved. In addition, once the public meeting has been held, and input has been received from the public and businesses, the Planning and Building Department will present recommendations regarding the long-term regulation of patios, outdoor retail sales and outdoor recreational/entertainment establishments.

## Attachments

- Appendix 1: Detailed Information and Preliminary Planning Analysis
- Appendix 2: Supplementary Recommendation Report – Temporary Outdoor Patios
- Appendix 3: Public Meeting Information/Recommendation Report – Outdoor Business Activities
- Appendix 4: Necessary Amendments to City By-laws



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