

City of Mississauga  
**Corporate Report**



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| <p>Date: November 22, 2023</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 file:<br/>BL.09-PAT (All Wards)</p> |
|   | <p>Meeting date:<br/>December 11, 2023</p>          |

## Subject

**PUBLIC MEETING INFORMATION/RECOMMENDATION REPORT (ALL WARDS)**  
**Proposed Amendments for Outdoor Patios and Outdoor Retail Sales and Display**  
**File: BL.09-PAT (All Wards)**

## Recommendation

That the proposed amendments to Zoning By-law 0225-2007, as detailed in Appendix 3, and other City by-laws, as detailed in the report dated November 22, 2023, from the Commissioner of Planning and Building, be approved in accordance with the following:

1. That implementing by-laws be enacted at a future City Council meeting, including by-laws that would allow seasonal outdoor patios and seasonal outdoor retail sales and displays to operate with waived fees for a period of two years until December 31, 2025.
2. That notwithstanding planning protocol, that this report regarding the proposed Zoning By-law 0225-2007, be considered both the public meeting and a combined information and recommendation report.

## Executive Summary

- To continue support of local restaurants and businesses, this report proposes Zoning By-law amendments to transition the Temporary Outdoor Patio Program, which expires on December 31, 2023, to as-of-right permissions within the Zoning By-law.
- Patios come in two forms – there are patios on private property (those permitted in specific zones and accessory to restaurants, convenience restaurants and take-out restaurants, and patios on public property (such as those in the Port Credit Cultural Node which permits patios on public ROW lands like sidewalks and lay-by parking spaces.

- The proposed Zoning bylaw would regulate private patios.
- Key zoning amendments include as-of-right permissions for seasonal and permanent patios, adjusting parking space utilization, restricting rooftop patios, and eliminating the 60 m (197 ft.) separation distance requirement for restaurant uses near residential zones.
- This report also proposes changes to other City by-laws governing public lands and fees. Changes include waiving associated fees for a two year period, city-wide restrictions for seasonal outdoor patios and retail sales and display areas to municipal sidewalks, and permission for long-term patio structures on sidewalks and lay-by parking areas in the Port Credit area.

## Background

### TEMPORARY OUTDOOR PATIO/OUTDOOR BUSINESSES PROGRAMS

The Temporary Outdoor Patio/Outdoor Businesses Programs were introduced to provide support to businesses in Mississauga during the COVID-19 pandemic. To meet social distancing and other pandemic restrictions, temporary outdoor uses such as patios, drive-in movie theaters, live entertainment, bingo halls, and sport viewing events were permitted as follows:

- On July 8, 2020, Council passed Temporary Use By-law 0163-2020 which permitted temporary outdoor patios accessory to restaurants, convenience restaurants and take-out restaurants in certain zones until December 31, 2020. Subsequent extensions were granted through Temporary Use By-law 0233-2020 and 0241-2021, with approvals granted until December 31, 2023.
- On December 9, 2020, Council passed Temporary Use By-law 0307-2020, permitting temporary outdoor retail and recreational/entertainment establishments until December 31, 2021. An extension was approved to December 31, 2023, through Temporary Use By-law 0246-2021.
- Staff were directed to report back on community consultation, and with recommendations on permanent regulations for patios and/or outdoor recreational/entertainment establishments.

Reports associated with those approvals can be found in Appendix 1 of this report.

Today, temporary outdoor patios in Mississauga come in two forms – patios on private property (those permitted in specific zones and accessory to restaurants, convenience restaurants and take-out restaurants), and patios on public property (such as those in the Port Credit Cultural Node which permits patios on public ROW lands like sidewalks and lay-by parking spaces).

## **PORT CREDIT CULTURAL NODE PATIO PROGRAM**

Prior to the pandemic, temporary outdoor patios and retail sales areas were permitted on public sidewalks and lay-by parking areas through the Port Credit Cultural Node Pilot Project, initially approved in 2011 and subsequently renewed in 2012 and 2017. The Port Credit Cultural Node Pilot Project was integrated into the Temporary Outdoor Patio Program during the pandemic. Currently, the majority of temporary outdoor patio permits and encroachment agreements are concentrated in the Port Credit Business Improvement Association (BIA) area (see Appendix 2 for boundaries). In 2023, the City issued 15 permits and 12 encroachment agreements for temporary outdoor patios, all on public ROW lands like sidewalks and lay-by parking spaces. The number of patio permits and encroachment agreements issued indicates a gradual increase in the number of temporary outdoor patios since the beginning of the program.

## **Comments**

The temporary use by-laws for outdoor patios, outdoor retail sales and displays and outdoor recreational/entertainment establishments will expire on December 31, 2023. In response to Council's direction to review permissions for as-of-right permanent patios and/or outdoor recreational/entertainment establishments, staff have prepared the following recommendations. As part of staff's work, a targeted stakeholder engagement was undertaken, as well as a review of complaints fielded by the City during the last several years. The following provides an overview of this work.

### **A. COMMUNITY ENGAGEMENT - PATIOS**

Staff conducted targeted engagement sessions with the City's BIAs, Tourism Mississauga, Mississauga Board of Trade, Ontario Restaurant Hotel & Motel Association, Restaurants Canada, and local businesses. Feedback highlighted ongoing challenges in the restaurant industry due to COVID-19, emphasizing the crucial role of patios. Concerns included potential patio fee reinstatement, the need for a simpler application process, and a consistent look for patio structures. Port Credit BIA expressed concerns about substantial costs for temporary patio installations and seasonal removals.

A social media campaign and Patio Survey with 708 responses revealed strong support for outdoor patios, particularly in Port Credit BIA, citing benefits like enhanced visibility, increased capacity, revenue boost, and positive customer experiences. Concerns included screening from traffic and creation of comfortable seating areas. Insights from these engagements informed staff recommendations contained in this report.

### **B. COMPLAINT ANALYSIS**

To understand the impact of continuing temporary outdoor patios, staff reviewed noise complaints filed with the City during 2020 to 2022, totalling 5,630 complaints, covering various sources such as deliveries, construction, garbage removal, music, human (shouting noises), and animals (barking noises). Of these, only 366 were restaurant-related, constituting 6.5% of all complaints. This represents a small percentage of approximately 2,000 restaurants in Mississauga.

Regarding noise complaints directly related to restaurants with temporary outdoor patios, it is difficult to determine the exact number of outdoor patios due to the fact that permits are not required for patios on private property. Nevertheless, data from 2020 to 2022 indicates that they did not generate significant issues. Most complaints were linked to patio locations encroaching on specific areas which can be remedied with appropriate enforcement. It is also worth noting that in June 2023, Mississauga updated its Noise Control by-laws and policies, offering improved services and expanding enforcement staff coverage on weekends and overnight.

### C. PROPOSED ZONING BY-LAW AMENDMENTS

The temporary use by-laws for outdoor patios and outdoor recreational/entertainment establishments will expire on December 31, 2023. Staff are proposing to update and transition the temporary patio (renamed to seasonal outdoor patio) regulations for private lands to as-of-right permissions. The major amendments are outlined below. For a detailed list of the amendments, please see Appendix 3.

#### 1. Parking Space Utilization

During the pandemic, the temporary outdoor patio regulations permitted converting up to 50% of required parking spaces into outdoor patios. However, post-pandemic, this is no longer necessary, as businesses no longer need to operate exclusively outdoors for public health reasons. Staff propose revising parking requirements for seasonal outdoor



Figure 1: Seasonal Parking Space Conversion

patios, allowing a maximum of three parking spaces (on private lands) per restaurant, as shown in Figure 1, estimating that these three spaces can accommodate approximately 33 patrons. This change aims to support local restaurants with outdoor seating while ensuring ample parking availability in the post-pandemic period.

#### 2. Permanent Outdoor Patios

With the exception of Downtown Core zones (**CC1** to **CC4**, **CCO**, and **CCOS**) and Office zones (**O2** and **O3**), restaurants seeking to establish a permanent patio typically require minor variance approval. Staff are proposing zoning amendments to synchronize zones, allowing permanent and seasonal outdoor patios in the same zones. It is important to note that permanent outdoor patios on private lands will remain subject to Site Plan Control and require a Site Plan Application. This is because permanent outdoor patios are considered significant additions or alterations to a building or structure that increase its usability. The Site Plan Control process ensures a comprehensive review and approval of details such as the patio's location, size, and design, along with considerations related to landscaping, traffic, parking, accessibility, and safety.

### 3. Rooftop Patios

To mitigate the impact of noise and echoing on nearby residential areas, staff propose restricting the placement of both permanent and seasonal outdoor patios on rooftops. However, businesses that want a rooftop patio will have the option to apply to the Committee of Adjustment for a Minor Variance to the by-law. Existing permanent rooftop patios with legal permissions will be recognized as legal non-conforming uses, otherwise known as "grandfathering."

### 4. Separation Distance from Residential Zones

The current Zoning By-law requires a 60 m (197 ft.) setback for restaurants from residential zones. This regulation was subject to 179 Committee of Adjustment minor variance requests from 2013 to 2023, with only one refusal in 2015. Staff conclude that this separation regulation is an inefficient land use restriction, especially in densely populated and mixed-use areas. The removal of this regulation is proposed to reduce unnecessary minor variance applications for restaurants within permitted zones. If approved, restaurants near residential zones will still be required to comply with general building setback regulations, and staff propose that restaurants with patios will be required to maintain a 6 m (20 ft.) setback, ensuring a reasonable buffer for concerns such as noise, privacy, and aesthetics.

### 5. Temporary Outdoor Recreational and Entertainment Establishments

Post-pandemic, staff have received no new inquiries for outdoor recreational/entertainment establishments. Consequently, staff recommend that those permissions within the temporary use by-law expire at the end of 2023, excluding the regulations for outdoor retail sales and display.

### OTHER CITY BY-LAWS – PATIOS ON PUBLIC LANDS

Patios on public lands are not subject to the Zoning By-law, as this by-law only regulates private lands. In order to continue the outdoor patio and outdoor retail sales and display permissions on public lands, and to continue waiving any fees, amendments to various City by-laws are required. Table 1 below is a list of the by-laws that will be required to be amended:

| By-law  | Changes  |
|---|--|
| Prohibit Sale of Goods on Highways By-law (0127-1995) | <ul style="list-style-type: none"> <li>▪ Permit business operations on a public highway, including seasonal outdoor retail sales and displays and outdoor patios (permanent and seasonal).</li> <li>▪ Seasonal outdoor patios will be limited to sidewalk areas within the City's right-of-way (ROW) lands, with the exception of the Port Credit BIA area which will also be allowed on parking lay-bys.</li> </ul> |
| Encroachment Bylaw (0057-2004)                        | <ul style="list-style-type: none"> <li>▪ Port Credit BIA area patios will be permitted to maintain long-term structures on the city's sidewalks and lay-by parking spaces.</li> <li>▪ Waive application and agreement fees for patios on public lands for a period of 2 years, as specified in Appendix 5.</li> </ul>  |

| By-law                                   | Changes  |
|--|--|
| Business Licensing By-law (0001-2006)    | Waive the requirements for a fee payment and a Zoning Certificate for seasonal outdoor patios accessory to any type of restaurant with a valid Business License for a period of 2 years. |
| Noise Control Bylaw (0360-1979)          | Waive fees for an application for an exemption from the provisions of the By-law for a period of 2 years.  |
| Building By-law (0203-2019)              | Waive permit fees for a temporary tent for a period of 2 years.  |
| User Fees and Charges By-law (0251-2020) | Waive relevant fees in all applicable Schedules.   |

Table 1: List of Other City By-laws to be Amended for Outdoor Patios and Retail Sales & Display Areas

### Updates to the Patio Website, Guidelines and AGCO Approval Protocol

Should the proposed amendments be approved, staff will work towards producing an updated set of design guidelines for outdoor patios (both seasonal and permanent), as well as examine the redesign of the Outdoor Patio website to enhance the clarity of the application process. Additionally, staff are proposing to retain the approval process, established on an interim basis through Council Resolution 0102-2023, that enables City staff to temporarily approve outdoor extensions of liquor licenses for restaurants selling alcohol on patios on behalf of the Alcohol and Gaming Commission of Ontario (AGCO). Refer to Appendix 6 for details of the Resolution.

## Planning Analysis Summary

The *Provincial Policy Statement* (PPS) establishes the overall policy directions on matters of provincial interest related to land use planning and development within Ontario. It sets out province-wide direction on matters related to the efficient use and management of land and infrastructure; the provision of housing; the protection of the environment, resources and water; and, economic development.

The *Growth Plan for the Greater Golden Horseshoe* (Growth Plan) builds upon the policy framework established by the PPS and provides more specific land use planning policies, which support the achievement of complete communities, a thriving economy, a clean and healthy environment and social equity. The Growth Plan establishes minimum intensification targets and requires municipalities to direct growth to existing built-up areas and strategic growth areas to make efficient use of land, infrastructure and transit.

The *Planning Act* requires that municipalities' decisions regarding planning matters be consistent with the *Provincial Policy Statement* (PPS) and conform with the applicable provincial plans and the Region of Peel Official Plan (ROP). Mississauga Official Plan is generally consistent with the PPS and conforms with the Growth Plan, the *Greenbelt Plan*, the *Parkway Belt West Plan* and the ROP.

The proposed Zoning By-law amendments are consistent with the *Provincial Policy Statement* and conform to the *Growth Plan for the Greater Golden Horseshoe*, the Region of Peel Official Plan and Mississauga Official Plan.

A detailed Planning Analysis of the applicable land use policies and regulations can be found in Appendix 4.

## Financial Impact

The primary financial impacts involve staff time allocation, potential enforcement costs, and revenue loss from waived fees (should this report's recommendations be approved in full). According to Restaurants Canada and BIA groups, two-thirds of foodservice businesses remain in debt due to increased expenses and reduced revenue during the pandemic. Many anticipate a prolonged recovery period of over 18 months, especially for those with private loans and Canada Emergency Business Account (CEBA) loans. For these reasons, staff recommend extending the fee waiver for two years, where after, fees will be incrementally introduced. See Appendix 5 for a list of the waived fees.

The financial implications of allowing year-round operations for Port Credit BIA patios are further minimized as operators will be responsible for winter maintenance on the patios and walkways and for providing barrier walls, which costs the City approximately \$8,600 per installation per season. Municipal parking costs for permanent patios in lay-bys incur a financial impact dependent on the number of spaces used, estimating an annual revenue loss of \$61,000 in the Port Credit BIA area.

## Conclusion


The proposed amendments to the Zoning By-law and other City by-laws are vital for supporting Mississauga's businesses, simplifying processes, and aiding economic recovery. Outdoor patios have played a significant role in supporting the restaurant industry during the pandemic. These recommendations offer a pathway for businesses to adapt and thrive, contributing to the creation of vibrant and welcoming spaces in Mississauga.

The proposed amendments aims to sustain Mississauga's patio culture, supporting local businesses and enriching community life. In summary, the proposed Zoning By-law amendments are acceptable from a planning standpoint and should be approved.

## Attachments

- Appendix 1: Temporary Outdoor Patio and Temporary Outdoor Businesses Program Reports
- Appendix 2: Permitted Zones for Seasonal Outdoor Patio
- Appendix 3: Proposed Zoning By-law Amendments

- Appendix 4: Detailed Planning Analysis
- Appendix 5: Waived Fees Chart
- Appendix 6: Council Resolution 0102-2023



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