

City of Mississauga
Corporate Report



Date: June 15, 2020 To: Chair and Members of Planning and Development Committee	Originator's files: CD.21-TEM
From: Andrew Whittemore, M.U.R.P., Commissioner of Planning & Building	Meeting date: July 8, 2020

Subject

PUBLIC MEETING INFORMATION/RECOMMENDATION REPORT (All Wards) Covid-19 Recovery – Support for Temporary Outdoor Patios File: CD.21-TEM

Recommendation

1. That Planning and Development Committee recommend to Council to permit temporary outdoor patios, accessory to all types of restaurants for a period of time expiring on December 31, 2020, through a temporary use by-law in accordance with the regulations contained in the staff report dated June 15, 2020 from the Commissioner of Planning and Building.
2. That time limited amendments to the following City by-laws be approved in accordance with the regulations contained in the staff report dated June 15, 2020:
 - (i) Prohibit Sale of Goods on Highways By-law 0127-1995
 - (ii) Encroachment By-law 0057-2004
 - (iii) Business Licensing By-law 0001-2006
 - (iv) Noise Control By-law 0360-1979

Background

A meeting was held by Council on June 17, 2020, at which time a Report was received for information (see Appendix 1) and to give direction to staff to hold a statutory public meeting with respect to a temporary use by-law. Resolution 0191-2020 was adopted by Council on the same day.

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1. That Council authorize City staff to prepare a Temporary Use By-law effective to December 31, 2020, to permit outdoor patios accessory to all types of restaurants on adjacent private and public lands.
2. That Council authorize staff to prepare by-laws to amend the following City by-laws so as to not conflict with the provisions of the proposed Temporary Use By-law:
 - i. the Prohibit Sale of Goods on Highways By-law 127-95 to temporarily permit business operations on a public highway;
 - ii. the Encroachment By-law 57-04 to allow temporary outdoor patios accessory to all types of restaurants to temporarily infringe on a public highway;
 - iii. the Business Licensing By-law 001-2006 to allow temporary outdoor patios on private property to comply with zoning requirements;
 - iv. the Fees and Charges By-law 0156-2019 to allow an application for a temporary outdoor patio to be processed without charge.
3. That Council direct staff, upon the issuance of notice for the statutory public meeting to consider the temporary use by-law, to suspend the enforcement of those zoning by-law provisions which currently prohibit or regulate outdoor patios accessory to all types of restaurants on private and public lands and that the suspension continue until the temporary use zoning by-law comes into force or until the duration stipulated for the temporary use zoning by-law expires, as may be the case.
4. Notwithstanding planning protocol, that a recommendation report from the Commissioner of Planning and Building be scheduled for a Planning and Development Committee meeting to be held on July 8, 2020, to conduct a public meeting to meet the statutory requirements under the provisions of the Planning Act.

Comments

Since the Council meeting on June 17th, 2020, the Provincial Government moved the Region of Peel to Stage 2 of the Reopening Ontario framework. This step means that restaurants can now open for dining in outdoor areas only. The City's initiative to permit temporary outdoor patios on private property, curbside, parking lots and adjacent premises is consistent with the Provincial regulations and guidelines.

In anticipation of the move to Stage 2, and to accommodate the time required to convene a statutory public meeting to consider the temporary use by-law, Council passed Resolution 0192-2020, also on June 17th. This resolution suspended enforcement of the zoning by-law regulations that prohibit outdoor patios accessory to all types of restaurants. This waiver commenced upon publication of the notice for the statutory public meeting, and continues until the temporary use by-law comes into force or until the duration of the temporary use by-law expires.

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Since the City moved into Stage 2, staff has taken a number of steps to assist local restaurants on the road to economic recovery from the Covid-19 pandemic. These measures include:

- creating a website with quick links to each process (permission for patios on public or private property)
- creating a Temporary Patio Permit program to expedite the approval of the patios on public property/road allowances
- creating detailed design guidelines for temporary patios on private property
- creating a detailed communications plan
- dedicating staff resources to work solely on this program

COMMUNITY ENGAGEMENT

Notice of the Public Meeting was placed in the Mississauga News on June 18th, 2020, in compliance with the regulations of the *Planning Act*. The notice was also sent by email to the City's Business Improvement Areas, MIRANET, the Mississauga Board of Trade and Tourism Mississauga. Some Ward Councillors were also able to use their office contact lists/websites to further advertise the statutory public meeting.

In lieu of a typical community meeting, staff attended meetings with representatives from all the BIAs, as well as with Tourism Mississauga to answer questions and help promote the pending process for temporary patios. Staff also attended a webinar hosted by the Economic Development Office and the Mississauga Board of Trade.

TEMPORARY USE BY-LAW

The Temporary Use By-law is regulated under the *Planning Act*. In Section 19.2 of Mississauga Official Plan, a temporary use which conforms to Mississauga Official Plan is permitted to deal with unfamiliar issues on a trial basis. Outdoor patios as a generally permitted use throughout the City is an unfamiliar use based on historic zoning restrictions and business practices. The temporary permission to allow them in parking lots associated with all types of restaurants and within public rights of way conforms to Mississauga Official Plan. Under this policy, the temporary use zoning amendment is consistent with the *Provincial Policy Statement*, and conforms to the *Growth Plan for the Greater Golden Horseshoe* and the Region of Peel Official Plan. The *Greenbelt Plan* and *Parkway Belt Plan* policies do not apply.

The regulations recommended for temporary patios in the proposed temporary use by-law are as follows:

- permission for an outdoor patio accessory to all types of restaurants where Zoning By-law 0225-2007, as amended, does not permit this use in zones O (Office) and exception zones, C1 to C4 (Commercial) and exception zones, E1 to E3 (Employment) and exception zones and H-CC1 to H-CC4 and H-CCO and exception zones where any type of restaurant is permitted
- temporary patios shall not be permitted on required landscaped areas or landscaped buffers

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- temporary patios shall maintain a setback of 6.0 m (19.7 ft.) from residential zones
- temporary patios shall not occupy more than 50% of required parking spaces
- temporary patios shall not occupy any accessible parking spaces
- temporary patios shall not obstruct driveways or parking aisles
- waive the requirement for a Certificate of Occupancy
- the temporary use by-law shall expire on December 31, 2020

OTHER TEMPORARY BY-LAW AMENDMENTS

Other City by-laws that require amendment to facilitate the installation of temporary patios are regulated under the *Municipal Act* and, unlike amendments to the Zoning By-law, do not require public notice. All proposed amendments will have the same expiration date of December 31, 2020. The proposed changes are as follows:

Prohibit Sale of Goods on Highways By-law 0127-1995

- exempt Public Highways adjacent to Office (O), Commercial (C1-C4), Employment (E2) and all relevant exception zones and Employment in Nodes - Exceptions (E1-Exceptions) zones where all types of restaurants are permitted by the zoning

Encroachment By-law 0057-2004

- add temporary outdoor patios as an exception to the regulation that prohibits encroachment onto a public highway
- add an exception to remove the requirement for payment of a non-refundable fee

Business Licensing By-law 0001-2006

- waive the requirements for a fee payment and a Zoning Certificate

Noise Control By-law 0360-1979

- waive fees for an application for an exemption from the provisions of the By-law

Financial Impact

Although a number of City fees will be waived as part of the temporary outdoor patio initiative, the fees would not normally have been collected and would not have been included as part of the City's revenue stream. The patio program is intended to assist local restaurants in their economic recovery. Fees related to permitting patios were not anticipated in this year's budget. The main financial impact will be the reallocation of staff time to facilitate the successful implementation of the temporary outdoor patio program.

Conclusion

In summary, the proposed regulations for the Temporary Use By-law and temporary amendments to other City by-laws are consistent with good planning. The regulations allow legal restaurants to expand in a reasonable manner, consistent with Provincial guidelines.

These actions will contribute to the City of Mississauga's overall plan for recovery from the Covid-19 pandemic, and should be approved.

Attachments

Appendix 1: Information Report



Andrew Whitemore, M.U.R.P., Commissioner of Planning & Building

Prepared by: Lisa Christie, Special Projects Planner

Date: June 12, 2020 To: Mayor and Members of Council	Originator's files: CD.21-TEM
From: Andrew Whittemore, M.U.R.P., Commissioner of Planning & Building	Meeting date: June 17, 2020

Subject

Covid-19 Recovery – Support for Temporary Outdoor Patios

Recommendation

1. That Council authorize City staff to prepare a Temporary Use By-law effective to December 31, 2020, to permit outdoor patios accessory to all types of restaurants on adjacent private and public lands.
2. That Council authorize staff to prepare by-laws to amend the following City by-laws so as to not conflict with the provisions of the proposed Temporary Use By-law:
 - i. the Prohibit Sale of Goods on Highways By-law 127-95 to temporarily permit business operations on a public highway;
 - ii. the Encroachment By-law 57-04 to allow temporary outdoor patios accessory to all types of restaurants to temporarily infringe on a public highway;
 - iii. the Business Licensing By-law 001-2006 to allow temporary outdoor patios on private property to comply with zoning requirements;
 - iv. the Fees and Charges By-law 0156-2019 to allow an application for a temporary outdoor patio to be processed without charge.
3. That Council direct staff, upon the issuance of notice for the statutory public meeting to consider the temporary use by-law, to suspend the enforcement of those zoning by-law provisions which currently prohibit or regulate outdoor patios accessory to all types of restaurants on private and public lands and that the suspension continue until the temporary use zoning by-law comes into force or until the duration stipulated for the temporary use zoning by-law expires, as may be the case.
4. Notwithstanding planning protocol, that a recommendation report from the Commissioner of Planning and Building be scheduled for a Planning and Development

Committee meeting to be held on July 8, 2020, to conduct a public meeting to meet the statutory requirements under the provisions of the *Planning Act*.

Background

In an effort to protect public health and safety during the COVID-19 pandemic, the Province announced a shutdown of all non-essential services across Ontario on March 17th, 2020.

Mississauga's local businesses have experienced reduced revenues that have led to business closures, employee layoffs, inability to pay rents, and reduced operating hours. Some food service providers have increased their online presence, and have adapted their business models to offer delivery and new curbside pick-up opportunities.

In May 2020, the Economic Development Office and the Mayor's Office engaged BIAs in a discussion about economic impacts of the pandemic and opportunities for the City to provide support to local businesses. One suggestion for assistance was that the City could provide support for temporary patios without the need for either a minor variance or a rezoning and the site plan approval process. A letter submitted by MBOT also sought Council's assistance in support of patio expansions.

On June 8, 2020 the Province amended regulations under the *Liquor Licence Act* and waived fees to permit licenced establishments to temporarily add or extend patios adjacent to their premises until January 1, 2021, provided they have municipal approval.

In addition, on June 11, 2020 the Province issued O.Reg.263/20 – Stage 2 Closures, which permits restaurants, bars, food trucks and other food establishments to open for in-person dining, only in outdoor dining areas located in or adjacent to the place of business. Physical distancing is required between tables and singing and dancing is prohibited on patios.

Outdoor patios ("patios") are not permitted accessory to any type of restaurant as-of-right in Zoning By-law 0225-2007 ("the By-law"). Patios are only currently permitted on private property in the Downtown Core and in Port Credit as an accessory use to a restaurant or take-out restaurant, where there is a specific program in place for the use of private land contiguous to a building on a sidewalk, and for use of public land (lay-by parking spaces). Patios are also permitted accessory to restaurants where a minor variance or exception zone has allowed the use.

Comments

Canadian municipalities including Winnipeg and Edmonton have begun to implement temporary patio programs that waive applicable permits, fees and relaxed zoning requirements during the COVID-19 recovery period. Ontario municipalities including Oakville, Hamilton and Kingston have received council endorsement for patio implementation plans to be used when restaurants are permitted to reopen.

On June 10, 2020, Council passed Resolution 0175-2020:

That Council direct staff to schedule a public meeting and prepare a report related to the use of a temporary zoning by-law to allow restaurant patios on private and public property to utilize outdoor spaces to accommodate seating for customers.

In advance of receiving Provincial direction that the Region of Peel is moving into Stage 2 such that restaurants are permitted to resume table service in outdoor dining areas, City staff will prepare a temporary use by-law and the necessary amending by-laws to permit outdoor patios accessory to all types of restaurants on both municipally-owned and private lands until December 31, 2020.

Temporary Zoning Considerations

In order to permit patios on lands where restaurants are permitted, the zoning by-law must be amended to allow the use. In response to social distancing requirements of the pandemic, it is proposed that they be permitted as-of-right in certain zones on a temporary basis.

Planning staff propose that patios be permitted in all zones that permit restaurants, take-out restaurants and convenience restaurants through a Temporary Use By-law. The zones that would be included are four commercial zones (C1 to C4), the Office (O) zone and one employment zone (E2), including all associated exception zones. Another employment zone (E1) has a number of exception zones that permit restaurants, and these would also be included. This permission would include municipally owned land, such as municipal parking lots where they are adjacent to lands that permit restaurants. The Temporary Use By-law would not permit patios where a restaurant is currently prohibited by an Exception Zone.

As example, the temporary use by-law would permit restaurants within strip malls to establish a temporary patio, including the use of some of the existing parking, where this is agreed upon by plaza management. Alternatively, a restaurant facing a public street could use the portion of its own property for a temporary patio; however, if they wish to use a portion of the sidewalk or street, they would only be able to do this upon entering into an encroachment agreement with the City.

Proposed Zoning Regulations

To expedite the approval of patios, staff recommend that the following set of zoning regulations be applied to each patio:

- i) not permitted on required landscaped areas or landscaped buffers
- ii) maintain a setback of 6.0 m (19.7 ft.) from residential zones
- iii) may occupy up to 50% of required parking spaces but not accessible parking spaces
- iv) may not obstruct a driveway or parking aisle

Roads & Right of Ways:

The Temporary Use By-law would not apply to municipally owned public highways, as they do not have zoning. Proposed patios on municipal roads will require an encroachment agreement and/or road occupancy permit with the City and will be reviewed with respect to the proposed design to ensure the safety of the travelling public and the patrons occupying the patio.

Site Plan Approval

In order to expedite patio openings, site plan approval will not be required for the installation of temporary outdoor patios. Patios proposed on municipal roadways will require an encroachment agreement with the City and will be reviewed with respect to the proposed design to ensure the safety of the travelling public and the patrons occupying the patio.

Patio Design

Staff will also produce an Urban Design Reference Note for Temporary Outdoor Patios that will provide examples of how to design temporary patios while respecting the proposed zoning regulations and allowing for adequate pedestrian movement around the patios. In the interim, patios on public property (i.e. parking lots) and private lands will still be regulated by the Nuisance Lighting By-law (262-12), Nuisance Type Noise By-law 785-80 and the Property Standards By-law 654-98.

Other Legislative Considerations

Until such time as the Temporary Use By-law is in force and effect, Council is requested to approve a recommendation directing staff to suspend the enforcement of the zoning by-law, including waiving the requirement for a Certificate of Occupancy and other regulations governing patios. This will assist the business community to move forward with patios in the warm weather as permitted by Provincial Regulations, taking into consideration the extraordinary circumstances of the pandemic.

To allow patios to locate on a travelled portion (lane/lanes) of a street, on lay-by parking or other part of a road allowance, temporary amendments to the *Encroachment By-law* and the *Prohibit Sale of Goods on Highways By-law* must also be prepared. As both of these by-laws are legislated under the *Municipal Act*, public notice is not required and there is no appeal period for the amendments.

Other by-laws that will need to be amended as part of this process are the *Business Licensing By-law* and the *Fees and Charges By-law*. All of the proposed amendments to the above noted by-laws would also expire on December 31, 2020.

Other municipal regulations will still apply when utilizing public streets, such as the need for a road occupancy permit. This permit is used to ensure construction safety, approving appropriate locations with respect to planned road works and other safety considerations. All permit applications and agreements will go through the regular review and approval process by the Transportation and Works Department.

The Planning Process

The City has to meet its statutory public meeting notification requirements under the *Planning Act* to implement this proposed zoning change. Notice will be given of the intent to approve the temporary use by-law on June 18th, advising that the statutory Public Meeting will be held at Planning and Development Committee (PDC) on July 8th, 2020. On the same day, Council will be asked to approve the PDC recommendation and approve the implementing temporary use by-law which will come into force and effect following the 20 day appeal period.

Communication Strategy

Once these measures are endorsed by Council, staff will contact local Business Improvement Associations, the Mississauga Board of Trade and the Mississauga Tourism Board in order to determine the best means of communicating information to restaurant owners.

Financial Impact

The financial impact of the Temporary Use By-law and permission to locate patios on a public highway will depend on which fees Council chooses to waive, and how many municipal parking spaces (lay-by and in publically owned parking lots) are approved for patio use. Examples of fees that could be waived include Encroachment Agreement applications (\$1,021) Zoning Certificates of Occupancy (\$500), \$650-\$900 to move or permanently relocate a parking meter plus \$201 per month, \$540 for Public Utilities Coordinating Committee fees and up to \$365 for Road Occupancy Permits. These are not typical revenues we would normally be collecting and are only being recommended to be waived due to the extraordinary circumstances that have occurred due to the global pandemic, which has placed undue burden on restaurants and the necessity of adapting to allow for the safety of their patrons by expanding seating areas through the use of patios to satisfy public health requirements.

Conclusion

A Temporary Use By-law is proposed to permit patios on public and private properties. At the same time, amendments to the Encroachment By-law and Prohibit Sale of Goods on Highways By-law will allow installation of patios on public property. These temporary actions represent good planning, and also ensure that restaurant capacity can be expanded in a safe and responsible manner in response to the physical distancing requirements of the Provincial Emergency Order.



Andrew Whitemore, M.U.R.P., Commissioner of Planning & Building

Prepared by: Lisa Christie, Special Projects Planner