

City of Mississauga

Corporate Report



Date: October 19, 2020

To: Mayor and Members of Council

From: Andrew Whittemore, M.U.R.P., Commissioner of
Planning & Building

Originator's file:
CD.21-TEM

Meeting date:
November 11, 2020

Subject

SUPPLEMENTARY RECOMMENDATION REPORT (All Wards)Public Meeting
Covid-19 Recovery – Support for Temporary Outdoor Patios File CD.21-TEM

Recommendation

1. That Council amend Temporary Use By-law 0163-2020 to permit temporary outdoor patios accessory to all types of restaurants to December 31, 2021, in accordance with the updated regulations in the staff report dated October 19, 2020, from the Commissioner of Planning and Building.
2. That amendments to the By-laws set out in the staff report dated October 19, 2020, and any other necessary amendments to By-laws related to temporary outdoor patios to allow them to operate at no cost until December 31, 2021, be approved.

Report Highlights

- The temporary patio program could be extended until December 31, 2021, and include permission for temporary tents to address the need for winter shelter
- Permitting temporary tents will require inspections by the Fire and Emergency Services ("Fire") with respect to type of material used and type and location of heat sources
- If approved, By-law Enforcement Officers will begin inspections of patio enclosures on public rights-of-way and on private property immediately
- Winter maintenance and the costs associated with enhanced snow removal will increase if temporary patios and/or tents are located on the municipal right-of-way over the winter months

Background

On July 8, 2020, Council passed Temporary Use By-law 0163-2020 to permit outdoor patios accessory to restaurants, convenience restaurants and take-out restaurants in certain Zones within the City of Mississauga until December 31, 2020. At the same meeting, a temporary patio program was endorsed to allow restaurants to install patios on public lands (right-of-way sidewalks outside the storefront and/or in on-street parking spaces). This program is set to expire on November 15, 2020.

In support of the temporary patio program several amendments to City By-laws were also adopted by Council. Specifically, these enabled fees for encroachments, noise by-law exceptions and business licensing to be waived, and the sale of goods on public roadways was permitted.

Since the Council meeting held on July 8, 2020, staff received numerous inquiries from a diverse group of businesses across all wards, including bars, restaurants, banquet halls and convention centres, cultural centres, bakeries and lounges. In total, there was 52 inquiries for patios on private lands, and 17 for public lands. Staff estimate that 75 patios were installed on private property, for which no municipal approvals were required. A total of nine temporary permits were issued to businesses for patios on public rights-of-way.

Generally, the program was successful. While staff received some complaints from members of the public and business owners, these primarily related to businesses not complying with the Provincial Regulations and/or the City's Temporary Patio Design Guidelines. As example, on private lands some patios were placed over accessible parking spaces and interfered with pedestrian walkways, while others related to blocked parking spots. Generally, these complaints were addressed by the property owners or management companies.

Other complaints related to the construction of platforms for temporary patios on private lands and on public rights-of-way. By-law Enforcement staff responded to 311 calls to ensure these platforms did not require building permits. If relevant, the restaurant owner was directed to Realty Services to sign up for the Port Credit Cultural Node patio program.

Comments

As of October 10, 2020, the Province of Ontario issued new restrictions for restaurants and bars that prohibit indoor dining, for a second time. As a result, local restaurant businesses continue to experience reduced revenues and seek the City's support to assist the hospitality industry. Specifically the continuation of the temporary program and provision for an ability to utilize tents is desired.

EXTENSION OF THE TEMPORARY USE BY-LAW

Staff propose to extend the existing temporary by-law with amendments. This entails a new expiry date of December 31, 2021, and adding a provision for temporary tents to existing zoning regulations. Specifically, the definition of a temporary outdoor patio will be amended to include the words "that may be covered by a temporary tent".

With respect to the permission of tents, Provincial regulations state that patios are to be open air, but if it is covered by a roof, canopy, tent, awning or other element, at least two full sides of the outdoor dining area must be open to the outdoors, and must not be substantially blocked by any walls or other impermeable physical barriers. The City of Mississauga does not have authority to alter or change the Provincial regulations.

Typically, a tent on private property would require a site plan approval express review and approval by Development and Design staff, however staff recommend that this requirement be waived for tents on temporary outdoor patios.

It should also be noted, where a business proposes a temporary tent attached to, or located within 3 m (9.5 ft.) of a building, and if they are greater than 60 m² (645 ft²) in size, a building permit would be required. Council may elect to waive the building permit fee in these cases.

Additionally, a recent trend occurring throughout many cities has been the use of "dining bubbles". It is staff's position that a dining bubble would not meet the provincial regulations as currently set out. However, should this change at some point, a dining bubble would be in compliance with the temporary patio by-law.

The proposed changes and extension of the temporary use by-law is consistent with the Provincial Policy Statement, conforms to the Growth Plan, the Region of Peel Official Plan and Mississauga Official Plan, and represents good planning.

EXTENSION OF TEMPORARY PATIO PROGRAM ON PUBLIC RIGHTS-OF-WAY

There are 21 legal patios installed in the road allowance in Port Credit (14), Streetsville (six) and Clarkson (one). These patios are permitted under both the temporary patio program and the Port Credit Cultural Node patio program.

Any winter weather event will present unique maintenance challenges for Works Operations and Maintenance. As example, the use of automated sidewalk snow clearing equipment will be difficult, and additional handwork with crews manually shovelling the priority sidewalks will be required. Patios within the public ROW will also impact the City's ability to store snow in the road allowance. Consequently, additional snow removal efforts using a combination of specialized equipment and labour will be required.

Additional costs are anticipated should a winter event occur that requires salting and/or plowing of the roadway and priority sidewalks. In addition, Council-approved winter maintenance service

level timelines for major roads and priority sidewalks may be negatively impacted due to the obstruction the patios present.

However, business owners will be responsible for clearing all snow and/or ice from their patio, including the entry and exit points for the patio and restaurant.

OTHER CONSIDERATIONS

With the extension of the Temporary Use By-law, and the new provision for temporary tents, staff anticipate the use of heaters during the winter months. Staff recommend an enforcement program that focuses on public safety and the compliance with Provincial regulations, as outlined in the following sections.

Fire and Emergency Services - Patio Heater Guidelines

Gas fired commercial tent heaters that are located external to a temporary tent and which pump heat into the tent would be permitted. Commercial grade and professionally installed electrical heaters located inside a temporary tent would also be permitted, however, no power cords may cross a municipal sidewalk. All types of heaters will be subject to Fire inspection and approval.

Propane and natural gas patio heaters which are designed for outdoor use only, will not be permitted within an enclosed structure, such as a tent. Patio Heater Safety Guidelines prepared by the Technical Standards & Safety Authority (TSSA) provide this guidance.

Tents shall meet the design specifications of the Ontario Fire Code. Tents greater than 30 m² (323 ft²) shall also meet Flameproofing Treatment requirements of the Ontario Fire Code, along with any other applicable fire code requirements.

Enforcement

By-law Enforcement Officers will begin inspections of patio enclosures on public rights-of-way immediately upon their approval by the City. As well, inspections will respond to complaints received through the public, and will be proactively undertaken in specific locations during high use times and periods of inclement weather.

Inspections of tents located on private lands will occur on a complaint basis, or when identified by staff as part of their proactive inspection. When Enforcement staff note the presence of a temporary tent, with or without a heater, they will contact Fire Inspection for follow-up. For large tents, or those attached to or within 3 m (10 ft.) of a building, By-law Enforcement will contact Building staff for follow-up.

By-law Enforcement will initially provide Notices of Contravention for patio enclosures that are non-compliant with either the Provincial Regulations or the City's Conditions for Temporary Patios. This may escalate to Provincial Offence Notices for repeated violations, where applicable. Officers will also provide enforcement of any noise exemptions that may be approved for patios.

OTHER TEMPORARY BY-LAW AMENDMENTS

Other City of Mississauga By-laws that require amendments to continue to facilitate temporary outdoor patios are regulated under other Provincial Acts. All proposed amendments will have the same expiration date of December 31, 2021, and any required fees for tents that have already been installed will be refunded, retroactive to October 10th, which was the date that the Region of Peel was put into a Modified Stage 2 by the Province. The proposed changes are as follows:

By-law	July 2020 Changes	November 2020 Change
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.	Extend exemption to December 31, 2021.
Encroachment By-law (0057-2004)	Add temporary outdoor patios as an exception to the regulation that prohibits encroachment onto a public highway. Waive all permit application fees and fees for agreements authorizing temporary patios on public lands or City rights-of-way.	Extend exceptions to December 31, 2021.
Business Licensing By-law (0001-2006)	Waive the requirements for a fee payment and a Zoning Certificate.	Extend exemptions to December 31, 2021.
Noise Control By-law (0360-1979)	Waive fees for an application for an exemption from the provisions of the By-law.	Extend changes to December 31, 2021.
Building By-law (0203-2019)	N/A	Waive permit fees for a temporary tent, to expire on December 31, 2021. An amending By-law will be brought to Council on November 25 th .

Council	2020/10/19	6
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Originator's file: CD.21-TEM

By-law	July 2020 Changes	November 2020 Change
User Fees and Charges By-law (0156-2019)	N/A	Waive relevant fees in all applicable Schedules, to expire on December 31, 2021.

COMMUNITY ENGAGEMENT

Ontario Regulation 345/20, issued under the *Reopening Ontario Act 2020*, exempted temporary use by-laws from the requirements for providing public notice and holding a statutory public meeting. However, notice of the passing of the By-law will be provided by the Office of the City Clerk, and Communications staff will coordinate a press release and will provide updates on the City's website.

Financial Impact

The temporary patio program is intended to assist local restaurants in their economic recovery. Although a number of City fees will be waived as part of the continuation of the temporary outdoor patio initiatives, the fees would not normally have been collected and would not have been included as part of the City's revenue stream.

The main financial impacts will be the reallocation of staff time to facilitate the continued implementation of the temporary outdoor patio program, increased enforcement costs and the increased cost of winter maintenance.

The following table shows the average number of winter events in the last three years by specific time frame, as well as estimated additional costs for increased sidewalk handwork and road allowance snow removal:

Time Period	Salting and Plowing Events – Three Year Average	Estimated Additional Costs
November 16 th to December 31 st	10	\$30,000
January 1 st to April 15 th	40	\$120,000
Total	50	\$150,000

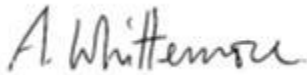
The estimated additional costs for winter maintenance as a result of extending the patio season to December 31, 2021, assuming all 21 legalized patios remain, is approximately \$30,000 for 2020 and \$150,000 for 2021. These costs are estimates only and could increase or decrease, depending on the number of winter events and the number of patios that are located in the road allowance.

Conclusion

The proposed amendments and extension of the Temporary Use By-law and temporary amendments to other City of Mississauga By-laws are consistent with good planning. The regulations will allow legal restaurants to maintain their temporary outdoor patios through the cooler weather at no cost to the businesses, and this will contribute to the City of Mississauga's overall plan for recovery from the COVID-19 pandemic.

Attachments

Appendix 1: Information Report dated July 8, 2020



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