



Report to: Development Services Committee

Report Date: June 8th, 2020

SUBJECT: INFORMATION REPORT, City Initiated Temporary Use Zoning By-laws to permit extended outdoor patios and outdoor display and sales areas
FILE NO.: PR-20-115253
WARD: City Wide
PREPARED BY: Brad Roberts – Manager of Zoning and Special Projects

RECOMMENDATION:

That the report titled “INFORMATION REPORT, City Initiated Temporary Use Zoning By-laws to permit extended outdoor patios and outdoor display and sales areas”, be received.

EXECUTIVE SUMMARY:

As the Province begins to authorize the re-opening of businesses during the current COVID-19 emergency, it is understood that ensuring physical distancing will continue to be an important public health measure. Staff is proposing temporary measures for the remainder of 2020, to remove certain municipal barriers that will assist restaurants and bars, along with other businesses, to operate while respecting physical distancing. Staff are also proposing that under the current economic conditions municipal fees related to these measures be waived.

PURPOSE:

The purpose of this report is to provide information on proposed by-law amendments, and to advise of the statutory Public Meeting scheduled for June 11th, 2020.

It should be noted that this proposed City-initiated Zoning By-law Amendment is moving forward during a period when the Province of Ontario has suspended *Planning Act* timelines for the review of an application and appeal to the Local Planning Appeal Tribunal. Under the emergency legislation, municipalities have the discretion to continue with City-initiated zoning by-law amendments, as long as the procedural requirements of the *Planning Act* can be met (e.g. sending of notices, public meetings, etc.). This proposal will be circulated to commenting departments for input, which will involve the typical resolution of any issues identified by staff. The City Clerk, Legal Services and Development Services are working together to address the mandatory requirements and any technical issues that may arise as a result of the emergency.

Process to date and next steps

- Zoning By-law Amendment process initiated by staff
- Public Meeting scheduled for June 11, 2020
- Staff recommendation report (if required)
- If approved, a draft Zoning By-law Amendment will be finalized and brought forward to a future Council meeting for enactment.

BACKGROUND:

As the Province of Ontario considers options to allow businesses to re-open amid the current COVID-19 emergency, the City has received requests from local businesses to allow for the temporary expansion of restaurant patios. On May 11th, 2020, Development Services Committee (“DSC”) directed Staff to review options for the temporary expansion of patios to address the anticipated need of restaurants to comply with physical distancing. Permitting the expansion of outdoor patios for restaurants and bars creates an economic opportunity for these businesses, while maintaining physical distancing, thereby providing a safer environment for their patrons and their staff.

While considering this request, Staff has also evaluated a number of other business operations, specifically retail, personal service, and other commercial or entertainment uses that, when opened, may benefit from additional temporary space to provide physical distancing for their clients and employees.

The proposed Temporary Use By-law would conform to the Official Plan and will provide additional options for businesses.

OPTIONS/ DISCUSSION:

Outdoor Patios

Markham's zoning by-laws currently restrict the location of outdoor patios and certain activities such as live music and entertainment or dancing, having regard for negative impact on existing residential areas. Current zoning also limits the size of patios based on parking availability.

The City's current zoning by-law determines the number of required restaurant parking spaces based on the size of a restaurant, and requires additional parking for outdoor patios that are over 40% (50% in Markham Centre) of the restaurant space. Outdoor patios with an area less than these prescribed percentages of the restaurant area are not required to provide additional parking spaces. Where a property does not have surplus parking available on site, this provision acts to restrict the size of an outdoor patio space.

While the zoning by-law is permissive of outdoor patio spaces, other zoning provisions make the location of patio space challenging for some existing sites. Satisfying zoning provisions such as required parking, soft landscaping, and loading spaces, leaves little land on a property to make temporary patios viable. Life safety and accessibility standards, including proper exits from buildings and required fire lanes on site, further restrict the location of potential outdoor patio space.

Proposed Temporary Use Zoning By-law

As part of the solution, staff is proposing a Temporary Use Zoning By-law, attached as Schedule "A", to temporarily remove the application of required parking for outdoor patio areas.

Removing this requirement to provide additional parking would allow any portion of a property to be used as a patio that is not occupied by required works, such as ramps, steps, walkways, or required soft landscaping.

Further, staff propose the potential use of some existing required parking as a preferred option to permit the temporary expansion of outdoor patios. The proposed by-law would therefore permit the greater of 4 spaces, or 33% of the "provided" parking to be used for outdoor patio areas. Therefore, essentially, the proposed amendment would allow a minimum of 4 spaces to be temporarily used as an outdoor patio, and may permit additional spaces to be used if the "provided" parking exceeds 12 spaces. A restaurant will need to consider its operational requirements in deciding to occupy required parking spaces with an outdoor patio. In no instance will accessible parking spaces be permitted to convert into any portion of an outdoor patio.

The proposed by-law also seeks to apply a consistent standard in protecting adjacent residential uses. Staff are proposing that a temporary patio should be permitted in a yard adjacent to residential zones, as that may be the only location of parking spaces that can be used for patios. Staff are proposing a patio maintain a minimum setback of 11.8 metres from any residential zone to provide some separation between the patio and the residential use. In addition, staff are proposing a consistent prohibition of entertainment such as performances, music, and dancing be applied to outdoor restaurant patios.

The *Planning Act* authorizes municipalities to pass a Temporary Use Zoning By-law for a defined period of time that cannot exceed three years from the date of the passing of the by-law, and allows for limited renewals of these by-laws. The proposed Temporary Use Zoning By-law is intended to meet immediate needs of businesses during the current Pandemic. Staff are proposing that the Temporary Use Zoning By-law expire on December 31st, 2020.

Site Plan Approval

Section 2 (e) of By-law 262-94, (Site Plan Control By-law) requires Site Plan Approval for the laying out and establishment of outdoor patios associated with restaurants to obtain Site Plan Approval. Delegation By-law 2002-202 currently delegates authority to the Director of Planning and Urban Design to grant Site Plan Approval for outdoor patios associated with restaurants. However, having regard for the financial difficulties being experienced by businesses, staff propose to simplify “site plan approval” and waive associated fees during the period of this temporary use by-law to allow the necessary planning review.

Heritage Properties

Under the *Ontario Heritage Act*, RSO 1990, c O.18, any alterations to a Heritage property, or within a Heritage Conservation District requires Heritage Markham review, and the approval of Council. Approval of alterations to Heritage Properties or within a Heritage District for outdoor patio expansions have been delegated to the Manager of Heritage Planning, provided all necessary policies are complied with. Following approval of a temporary outdoor patio expansion, the Manager of Heritage Planning will report back to Heritage Markham Committee and Council on any such approvals that are granted.

Road Occupancy Permits and Permissions to Enter

The City currently permits restaurants requesting to locate outdoor patios in a municipal boulevard to apply for a Road Occupancy Permit (“ROP”) or enter into a Permission to Enter (“PTE”) Agreement, where applicable, through the Operations Department. Review of ROP’s and PTEs include, amongst other things, the need for pedestrian and vehicular passage, access to existing layby parking, access for accessibility and emergency services, and any responsibilities the City may have legally through easement or other agreement. Conditions may be required as part of a ROP or PTE to address these matters. A ROP or PTE can only be issued on a municipal road allowance or municipal lands over which the City of Markham has jurisdiction. Requests to occupy boulevards on Regional or Provincial roads, or boulevards under the jurisdiction of adjacent municipalities, must be requested through those public authorities.

Alcohol Licenses

Restaurants and bars that propose to serve alcohol on their temporarily expanded outdoor patio would require an extension to their existing alcohol license. The Alcohol and Gaming Commission of Ontario (AGCO) can grant a temporary license to expand an existing licensed patio area through their Temporary 14 day Extension License. Including permitted time extensions, these licenses are capped at 56 days in a calendar year.

Each request for a liquor license within Markham, whether permanent or temporary, requires approval from Council prior to the AGCO granting the license. The Municipal Clerk must provide approval, and the Fire and Building Departments must review the application. In anticipation of multiple businesses making requests, and to provide the most responsive service possible, Staff are proposing that municipal approvals for liquor licenses be delegated to the City Clerk or their designate. This delegated authority would run concurrently with and expire with the proposed Temporary Use Zoning By-law. A recommendation to this effect will be included in a future resolution to Council to support the implementation of temporary patios and outdoor displays.

It should be noted that the Mayor recently issued a letter to the Ministry of the Attorney General and the AGCO requesting that they consider expanding the length of time that a temporary patio can operate under these licenses to at least 4 to 5 months. At the writing of this report, a formal response has not been issued.

Additional Permissions for Other Businesses

At this time, many retail stores are conducting curbside pickup or providing other drive up options for their customers. The operation of personal service shops outdoors has also been contemplated.

In most areas of the City, zoning provisions require businesses such as retail stores, personal service shops, or other entertainment businesses, to be conducted wholly within an enclosed building. Most areas of the City expressly prohibit the outdoor display and sales of merchandise. The zoning by-law also applies a required parking ratio to the area of the business.

To provide retail, personal service, and other commercial or entertainment uses with an opportunity to operate while providing physical distancing, Staff are proposing an additional temporary use zoning by-law to permit outdoor display and sales uses to operate outside a wholly enclosed building accessory to an existing permitted use, and to permit these operations to be located in required parking spaces. Any outdoor sales and display proposals will be subject to the same or similar review process as outdoor patios. It is the intent of the proposed amendments to temporarily remove several municipal barriers, while limiting any negative impact to adjacent residential zones.

It should also be noted that businesses may be regulated by other levels of government (such as the Regional Health Department), other business licensing agreements, or deed or condominium restrictions that may apply to a specific property. Businesses that may be exploring the options proposed in this report should consider any other potential restrictions on their operations.

If approved, Staff will develop an information package to assist businesses in navigating through these processes.

Fees are proposed to be waived

As businesses are experiencing severe financial difficulties as a result of the current emergency, staff propose that municipal application fees be waived. Proposed recommendations to this effect are attached as Appendix “C”.

FINANCIAL CONSIDERATIONS AND TEMPLATE: (external link)

Waiving of the City’s fees for the temporary extension of liquor licences, Road Occupancy Permits, Building review of temporary patio expansion, Planning review of Site Plans for temporary patios expansions, and Fire review of temporary patio expansions.

HUMAN RESOURCES CONSIDERATIONS

Not Applicable

ALIGNMENT WITH STRATEGIC PRIORITIES:

Growth Management priorities as provided for in the City of Markham’s Strategic Plan.

BUSINESS UNITS CONSULTED AND AFFECTED:

Legislative Services and Corporate Communications, Operations, Building Standards, Fire and Emergency Services

RECOMMENDED BY:

Biju Karumanchery, M.C.I.P., R.P.P.
and Urban Design

Arvin Prasad, M.C.I.P., R.P.P. Director, Planning
Commissioner of Development Services

ATTACHMENTS:

Schedule ‘A’ Draft By-law – Outdoor Patios
Schedule ‘B’ Draft By-law – Outdoor Display and Sales
Appendix ‘C’ Draft Resolutions

File path: Amanda\File 20 114819\Documents\Recommendation Report

SCHEDULE ‘A’



BY-LAW 2020-XXXX

A By-law to amend By-law 28-97, 71-96, and 2004-196, as amended

The Council of The Corporation of the City of Markham hereby enacts as follows:

1. That By-law **28-97, 71-96, and 2004-196**, as amended, is hereby further amended as follows:

“1.1 Notwithstanding Section 4.14.1 of By-law 2004-196, Section 1.2 of By-law 71-96, and Table B of By-law 28-97, the provisions in this By-law shall apply to all lands within the City of Markham. All other provisions of By-law 2004-196, and 28-97, unless specifically modified/amended by this Section, continue to apply to the lands subject to this Section.

1.1 Special Zone Standards

Outdoor patios accessory to an existing permitted *restaurant* may be located within a *parking area, parking space*, or drive aisle provided:

- a) There shall be no restriction on the maximum area of an *outdoor patio*
- b) Notwithstanding a) above, an *outdoor patio* located within a *parking area* shall not occupy no more than the greater of:
 - i) 4 *parking spaces*, or
 - ii) 33% of the provided *parking spaces* for the use
- c) An *outdoor patio* area associated with a *restaurant* shall be exempt from requirements for provision of *parking spaces*
- d) The *outdoor patio* does not occupy any required fire route
- e) The *outdoor patio* does not occupy *accessible parking spaces*
- f) An *outdoor patio* shall not be used to provide entertainment such as performances, music and dancing
- g) An *outdoor patio* may be located in a yard abutting a residential zone when located in an existing *parking area*
- h) An *outdoor patio* shall be setback a minimum of 11.8 metres from a residential zone

2. This By-law shall expire on December 31st, 2020, in accordance with the provisions of Section 39 of the Planning Act RSO 1990, c P.13 as amended.

Read a first, second, and third time and passed on XXXXXX

Kimberley Kitteringham
City Clerk

Frank Scarpitti
Mayor



EXPLANATORY NOTE

BY-LAW 2020 - XXX _____

A By-law to amend By-law's 28-97, 71-96, and 2004-196, as amended

City of Markham

Lands Affected

This by-law amendment applies to all the lands within the geographic boundaries governed by By-law's 28-97, 71-96, and 2004-196, as amended.

Purpose and Effect

The purpose and effect of the By-law amendment is to add additional special zone standards for outdoor patios within the geographic boundaries governed by By-law's 28-97, 71-96, and 2004-196, as amended. These additional standards will remove several municipal barriers to allow restaurants and bars, along with other businesses, to expand outdoor patio operations while respecting social distancing during the current COVID-19 emergency.

SCHEDULE 'B'



BY-LAW 2020-XXXX

A By-law to amend By-laws 1229, 1442, 1507, 1767, 1912, 2053, 2150, 2237, 2284-68, 2402, 2489, 2551, 2571, 2612, 11-72, 122-72, 77-73, 83-73, 84-73, 119-73, 151-75, 88-76, 127-76, 250-77, 145-78, 162-78, 163-78, 184-78, 72-79, 91-79, 118-79, 134-79, 153-80, 165-80, 72-81, 90-81, 108-81, 193-80, 221-81, 28-82, 194-82, 196-82, 47-85, 304-87, 19-94, 177-96, and 2004-196, as amended

The Council of The Corporation of the City of Markham hereby enacts as follows:

1. That By-law 1229, 1442, 1507, 1767, 1912, 2053, 2150, 2237, 2284-68, 2402, 2489, 2551, 2571, 2612, 11-72, 122-72, 77-73, 83-73, 84-73, 119-73, 151-75, 88-76, 127-76, 250-77, 145-78, 162-78, 163-78, 184-78, 72-79, 91-79, 118-79, 134-79, 153-80, 165-80, 72-81, 90-81, 108-81, 193-80, 221-81, 28-82, 194-82, 196-82, 47-85, 304-87, 19-94, 177-96, and 2004-196, as amended, are hereby further amended as follows:

“1.1 By-laws 1229, 1442, 1507, 1767, 1912, 2053, 2150, 2237, 2284-68, 2402, 2489, 2551, 2571, 2612, 11-72, 122-72, 77-73, 83-73, 84-73, 119-73, 151-75, 88-76, 127-76, 250-77, 145-78, 162-78, 163-78, 184-78, 72-79, 91-79, 118-79, 134-79, 153-80, 165-80, 72-81, 90-81, 108-81, 193-80, 221-81, 28-82, 194-82, 196-82, 47-85, 304-87, 19-94, 177-96, and 2004-196, as amended, are hereby amended, and the provisions in this By-law shall apply to all lands within the City of Markham. All other provisions of these By-laws, unless specifically modified/amended by this Section, shall continue to apply.

1.2 Special Zone Standards

Notwithstanding any provision of these by-laws regarding *outdoor sales and display*, the operation of a *use* within a wholly enclosed *building*, or the provisions of *outdoor storage*, the *outdoor display and sales* of merchandise *accessory* to a *permitted retail store*, the provisions of *personal services outdoors*, accessory to an existing permitted personal service shop, and the provision of entertainment uses outdoors, accessory to an existing entertainment use are permitted subject to the following:

- i) The *outdoor display and sales*, and the provisions of outdoor *personal services* occupies no more than the greater of:
 - iii) 4 *parking space*; or,
 - iv) 33% of the *required parking spaces* for the use
- j) Any *outdoor sales and display* area or the operation of a use not wholly within an enclosed building associated with an existing *retail store* or *personal service shop* shall be exempt from requirements for provision of *parking*
- k) The *outdoor display and sales*, and the provisions of outdoor *personal services* does not occupy any required fire route
- l) The *outdoor display and sales*, and the provisions of outdoor *personal services* does not occupy accessible *parking spaces*
- m) *Outdoor sales and display* area or the operation of a use not wholly within an enclosed *building* associated with an existing *retail store* or *personal service shop* shall not be used to provide entertainment such as performances, music and dancing, unless *accessory* to an existing entertainment use.

- n) *Outdoor sales and display* area or the operation of a use not wholly within an enclosed building associated with an existing *retail store* or *personal service shop* shall be setback a minimum of 11.8 metres from a residential zone
- o) The *outdoor display and sales*, and the provisions of outdoor *personal services* complies with all applicable waste by-laws and provincial legislation.

- 2. This By-law shall expire on December 31st, 2020, in accordance with the provisions of Section 39 of the Planning Act RSO 1990, as amended.

Read a first, second, and third time and passed on XXXXXX

Kimberley Kitteringham
City Clerk

Frank Scarpitti
Mayor



EXPLANATORY NOTE

BY-LAW 2020 - XXX _____

A By-law to amend By-law's 1229, 1442, 1507, 1767, 1912, 2053, 2150, 2237, 2284-68, 2402, 2489, 2551, 2571, 2612, 11-72, 122-72, 77-73, 83-73, 84-73, 119-73, 151-75, 88-76, 127-76, 250-77, 145-78, 162-78, 163-78, 184-78, 72-79, 91-79, 118-79, 134-79, 153-80, 165-80, 72-81, 90-81, 108-81, 193-80, 221-81, 28-82, 194-82, 196-82, 47-85, 304-87, 19-94, 177-96, and 2004-196, as amended.

City of Markham

Lands Affected

This by-law amendment applies to all the lands within the geographic boundaries governed by By-law's 1229, 1442, 1507, 1767, 1912, 2053, 2150, 2237, 2284-68, 2402, 2489, 2551, 2571, 2612, 11-72, 122-72, 77-73, 83-73, 84-73, 119-73, 151-75, 88-76, 127-76, 250-77, 145-78, 162-78, 163-78, 184-78, 72-79, 91-79, 118-79, 134-79, 153-80, 165-80, 72-81, 90-81, 108-81, 193-80, 221-81, 28-82, 194-82, 196-82, 47-85, 304-87, 19-94, 177-96, and 2004-196, as amended.

Purpose and Effect

The purpose and effect of the By-law amendment is to add additional special zone standards relating to outdoor sales and display areas accessory to permitted retail stores personal service shops and entertainment uses within the geographic boundaries governed by By-law's 1229, 1442, 1507, 1767, 1912, 2053, 2150, 2237, 2284-68, 2402, 2489, 2551, 2571, 2612, 11-72, 122-72, 77-73, 83-73, 84-73, 119-73, 151-75, 88-76, 127-76, 250-77, 145-78, 162-78, 163-78, 184-78, 72-79, 91-79, 118-79, 134-79, 153-80, 165-80, 72-81, 90-81, 108-81, 193-80, 221-81, 28-82, 194-82, 196-82, 47-85, 304-87, 19-94, 177-96, and 2004-196, as amended.

These additional standards will remove several municipal barriers to allow retail stores personal service shops and entertainment uses to expand their outdoor sales and display area operations while respecting social distancing during the current COVID-19 emergency.

APPENDIX ‘C’

In consideration of any potential approval, Staff would recommend the following resolutions to support the implementation of temporary patio expansions:

- 1) That authority to act on behalf of Council to grant municipal authorizations required by the Alcohol and Gaming Commission of Ontario (“AGCO”) for temporary extension of a liquor license be delegated to the City Clerk, ; and, That the fee for the processing of requests by the City for the temporary extension of liquor licences be waived in 2020.
- 2) That the Director of Operations, through an amendment to By-law 2013-136 as amended, be authorized to waive fees for Road Occupancy Permits to facilitate temporary patio expansions into the municipal boulevard.
- 3) That the Director of Building Standards, through an amendment to By-law 2019-136 as amended, be authorized to waive fees for review of temporary patio expansions.
- 4) That the Chief Fire Prevention Officer, through an amendment to By-law 111-98 as amended, be authorized to waive fees for review of temporary patio expansions.
- 5) That the Director of Planning and Urban Design, through an amendment to By-law 211-83 as amended, be authorized to waive fees for review of temporary patio expansions.

These amendments would run concurrently with, and expire with, the proposed Temporary Use Zoning By-law’s. A recommendation to this effect will be included in a future resolution to Council to support the implementation of temporary patios and outdoor displays.