



Report to: Development Services Committee

Meeting Date: November 9, 2020

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<b>SUBJECT:</b>	City Initiated Extension of Temporary Use Zoning By-law to permit outdoor patios and associated structures
<b>FILE NO.:</b>	PR-20-115253
<b>WARD:</b>	City Wide
<b>PREPARED BY:</b>	Brad Roberts – Manager of Zoning and Special Projects

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### **RECOMMENDATION:**

1. That the report titled “City Initiated Extension of Temporary Use Zoning By-law to permit outdoor patios and associated structures” be received;
2. That the City wide temporary zoning by-law to permit new or expansions to existing outdoor patios and associated structures be approved;
3. 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;
4. That the fee for the processing of requests to the City for the temporary extension of liquor licenses be waived in 2021;
5. That existing approved temporary new, or temporary expansions to existing patios located on private property are granted temporary expansions until December 31, 2021;
6. And that Staff be authorized and directed to do all things necessary to give effect to this resolution.

### **PURPOSE:**

The purpose of this report is to recommend the extension of temporary permissions to establish new, or extend existing patios, and to permit the establishment of tents, canopies, and other structures within temporary patio areas.

### **BACKGROUND:**

In response to the COVID-19 emergency, and following the Province moving from Stage 1 to Stage 2 of the COVID-19 recovery, on June 11, 2020, Council passed a temporary zoning by-law to permit the expansion of outdoor patios, and outdoor sales and display on a temporary basis, to assist with the reopening of local businesses (the “Temporary Patio Expansion By-law”). The Temporary Patio Expansion By-law came into effect on July 2, 2020 and will expire on December 31, 2020

To date, the City has processed 57 applications under the Temporary Patio Expansion By-law. Three of these applications included the execution of Road Occupancy Permits (ROP) to permit the patio extensions into municipal boulevards, while one included the execution of a Permission to Enter (PTE) to permit a patio on other municipal property.

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ROP and PTE agreements exist for a variety of reasons within the City, primarily to facilitate works on private lands that need the use of municipal property or boulevards for staging of construction, or to facilitate maintenance of private property. It is the practice of the City's Operations Department to only begin issuing ROP and PTE agreements in mid-April, based on weather, and all ROP and PTE agreements expire on November 1<sup>st</sup> to allow for snow clearing operations. Based on inspections of the above noted approved sites, the four patio expansions subject to ROP or PTE agreements have been removed from City property.

### **OPTIONS/ DISCUSSION:**

Due to the ongoing nature of the emergency and the need to support businesses through this challenging economic time Staff are proposing a new temporary use by-law to be passed under Section 39 of the *Planning Act*. The new Temporary Patio Expansion By-law would authorize the continued use of existing temporary patios on private property, along with permitting the establishment of new temporary outdoor patios until December 31, 2021. Staff are also proposing modifications to allow associated structures such as tents and canopies to assist in the operation of outdoor patios through adverse seasonal weather.

While the City's Temporary Patio Expansion By-law amended the zoning provisions to permit patios without generating additional parking requirements, it did not include provisions exempting tents or canopies from complying with the required zoning provisions. To assist these businesses in creating a more hospitable environment on their patios, Staff are proposing to permit the establishment of temporary structures, such as tents or canopies, within permitted patio expansions subject to compliance with the Building and Fire Codes, and a requirement to provide a minimum 1.2 metre setback from the lot line abutting a street. A number of safety and technical requirements associated with the use of a tent or canopy in a temporary patio area have been outlined in Appendix 'A'.

The Operations Department has determined that extending ROP and PTE agreements for temporary patios during the winter operating months from November 1, 2020 to mid-April, 2021 is not feasible. The area of encroachment associated with the boulevard patios is necessary to allow snow to be plowed from both the road and sidewalk to ensure safe passage for both vehicles and pedestrians during winter months. The cost increase associated with modified snow clearing operations, along with the potential damage to City equipment, potential damage to the furniture of the businesses, and the potential safety risks associated with snow clearing in close proximity to restaurant patrons prohibit the extension of ROP and PTE agreements through the winter. As is normal practice, subject to favourable shoulder season weather, and at the discretion of the Director of Operations, the City will consider ROP and PTE applications for extended patios starting in mid-April, 2021. Any ROP or PTE agreements for patio extensions executed in 2021 will expire on November 1, 2021, as per the practice of the department.

Following Council's approval of temporary patio expansions in June of 2020, the Engineering Department, in collaboration with the Operations Department, and some

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restaurant owners on Main Street Unionville, installed temporary traffic control measures to re-route pedestrian traffic, and facilitate a larger boulevard patios for some establishments on the east side of Main Street. As the installation and maintenance of the traffic control measures represented a cost to the City, Staff did not, and have not committed to the installation in 2021 or beyond. Staff are recommending the withholding of any decision on renewing the temporary traffic control measures until there is an opportunity to provide a full assessment of the cost.

Concurrent with the Temporary Patio Expansion By-law, Council also passed a by-law to permit outdoor sales and display on June 11, 2020. Staff only received one inquiry regarding outdoor sales and display, and the subject site already permitted the use. As outdoor sales and display are also not exempt from the Planning Act requirement for notice, public meeting, and appeal, Staff are not proposing to extend this temporary by-law.

On July 2, 2020, the Province enacted O. Reg 345/20 under the *Emergency Management and Civil Protection Act*, which amended a number of sections of the *Planning Act* related to the temporary establishment of additional outdoor patio or restaurant space. The regulation removed the requirement for public notice, the requirement for holding a public meeting, and the timeline and ability to file an appeal for temporary by-laws having the effect of extending patios. Based on this change, public notice, and a public meeting are not required for Council to pass the proposed by-law extension. Furthermore, the effective date of the new by-law is the date it is passed by Council.

#### **FINANCIAL CONSIDERATIONS AND TEMPLATE:**

While passing the initial temporary patio by-law in June, 2020, Council authorized the Director of Building Standards, the Director of Planning and Urban Design, the Director of Operations, the City Clerk, and the Chief Fire Prevention Officer to waive the City's fees associated with the review of temporary patio expansions, the review of ROP and PTE agreements, and issuance of extension of liquor licenses for existing licensed establishments. With the exception of the authority by the City Clerk to waive fees which expires at the end of 2020, these resolutions would continue to apply to any new application received in 2021 for a temporary patio expansion. Staff are proposing to extend the authority for the City Clerk to waive fees through 2021. Based on the number of patio applications received in 2020, it is not anticipated that new applications will generate a significant financial impact.

Given the nature and potential volumes associated with review of building permits for temporary structures in temporary patio areas, Staff are not seeking to exempt the application of fees for any required building permits.

#### **HUMAN RESOURCES CONSIDERATIONS**

N/A

#### **ALIGNMENT WITH STRATEGIC PRIORITIES:**

The proposed extension of temporary by-laws and the provision of additional exemptions align with the corporate goal of Engaged, Diverse, Thriving and Vibrant City.

**BUSINESS UNITS CONSULTED AND AFFECTED:**

Building Department, Clerks Department, Fire Department, Legal Services, Operations Department

**RECOMMENDED BY:**

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

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

**ATTACHMENTS:**

Appendix 'A' – Technical Requirements  
Scheduled 'A' – Draft By-law Temporary Zoning By-law

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## **Appendix 'A'**

### **Snow and Walkway Safety:**

Outdoor patios and walkways surrounding them, including sidewalks within the municipal boulevard should be cleared of snow and salted as required in a timely manner. Operators should regularly inspect tent structures to ensure they are safely secured to the ground and to remove any snow accumulation on the structure.

### **Ontario Building Code:**

Under the Building Code, the following requirements apply to tents, canopies and structures:

1. Individual tents greater than 60 square metres in area require a building permit and are subject to standards set out in the Building Code, including but not limited to a clearance of 3m to adjacent buildings.
2. Individual tents assembled closer than 3m to each other to form a group having a sum total area greater than 60 square metres also require permits and are subject to similar standards.
3. Tents other than those noted above are exempt from the requirement for a permit and are exempt from complying with the Building Code.
4. Accessory structures greater than 10m<sup>2</sup> in area require permits.
5. Additions, canopies or porch enclosures are subject to permits and the Building Code.

### **Fire Code:**

The technical specifications and safety requirements for tents and heaters are further regulated by the Fire Code. Given the varying regulations regarding heating sources that could be used by business operators within temporary tents or buildings, it is recommended that any business owner looking to include a heat source within a temporary tent or structure consult with and follow all safety specifications, or should consult an expert prior to commencing their operation.

1. The Fire Code requires that all tents, regardless of area and including those that that don't require a building permit, to be flame proofed in accordance with NFPA 705.
2. Smoking and open flame devices cannot be used in tents. Any open flame device is required to be accessible for firefighting purposes.
3. Fuel fired (eg. natural gas & propane) heaters can be used provided they are approve by the Technical Standards and Safety Authority (TSSA) for their particular use.
4. The manufacturer's installation instructions are to be strictly implemented for all heater use within tents.

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5. The electrical system and equipment in a tent, including electrical fuses and switches are to be inaccessible to the public.

**Use of tents or canopies under Stage 2 of the Provincial Recovery Plan:**

O. Reg 263/20 was enacted to regulate the operations of businesses, including restaurants, under Stage 2 of the Province's Recovery Plan. Schedule 2 of the O. Reg outlines standards associated with using a tent, roof, canopy, or awning over outdoor dining areas. These standards include a requirement for "two full sides" to be open to be considered outdoor dining under Stage 2 of the recovery. Under Stage 3 of the Provincial Recovery Plan, indoor dining is permitted, and there is no requirement for tents to be open on any side. Any approval by the City of a tent, canopy, or other temporary structure over a temporary patio must comply with any additional Provincial requirements.

## Schedule “A”

**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, 28-97, and 2004-196, as amended**

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

1. That 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, 28-97, and 2004-196**, as amended, is 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, 45-78, 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, 28-97, 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

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

- 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;

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- c) The *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 patios* does not occupy *accessible parking spaces*;
  - f) The *outdoor patio* shall not be used to provide entertainment such as performances, music, and dancing;
  - g) The *outdoor patio* may be located in a *yard* abutting a residential *zone* when located in an existing *parking area*;
  - h) The *outdoor patios* shall be setback a minimum of 11.8 metres from a residential *zone*; *and*
  - i) Notwithstanding any other provision within the By-law, temporary tents, canopies, or other temporary *structures* are permitted over any temporary patio authorized under this by-law subject to the following setbacks:
    - i) A minimum 1.2 metre setback to any *lot line* abutting a street
    - ii) A minimum 1.2 metres from any other municipal walkway.
2. This By-law shall be in force until December 31<sup>st</sup>, 2021.

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

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Kimberley Kitteringham  
City Clerk

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Frank Scarpitti  
Mayor





## **EXPLANATORY NOTE**

### **BY-LAW 2020 - XXX \_\_\_\_\_**

### **A By-law to amend By-law 2020-XX, as amended**

#### **City of Markham**

#### **Lands Affected**

This by-law amendment applies to all the lands governed by 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, 28-97, 177-96, and 2004-196, as amended, 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-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, 28-97, 177-96, and 2004-196, as amended. This by-law will act to replace by-law 2020-52 allowing the continued operation of existing temporary patios, and patio expansions, while also permitting new temporary patios, and the use of temporary structures such as tents within temporary patio areas until December 31<sup>st</sup>, 2021.