



Report to: Development Service Committee

Report Date: May 21, 2024

SUBJECT: Site Plan Control for Outdoor Patios
WARD: City Wide
PREPARED BY: Brad Roberts, Manager of Zoning and Special Projects

RECOMMENDATION:

- 1) THAT the report titled, “Site Plan Control for Outdoor Patios”, dated May 21, 2024, be received; and,
- 2) THAT the Amendment to the Site Plan Control By-law 262-94, as amended, be approved by Council, and that the draft Zoning By-law Amendment attached hereto as Appendix ‘A’, be finalized and brought forward to a future Council meeting to be enacted without further notice; and further
- 3) THAT Staff be authorized and directed to do all things necessary to give effect to this resolution.

PURPOSE:

On May 1st, 2024, Staff were directed by Council to review the site plan control by-law with respect to the application of site plan control to outdoor patios. This report is proposing recommend changes to the Site Plan Control By-law, 262-94, as it relates to the laying out of outdoor patios, and to update the policies for developments of 10 units or less in response to changes to the Planning Act as a result of Bill 23.

BACKGROUND:

Site Plan Control By-law 262-94

Site Plan Control By-law 262-94 prescribes the type and location of development that is subject to a site plan control application under Section 41 of the Planning Act.

The City’s Site Plan Control By-law 262-94 was amended in 1996 to require site plan approval for the laying out and establishment of outdoor patios associated with restaurant uses. A number of other amendments apply site plan control to various development application types within prescribed areas of the City, including low rise residential development.

Site Plan Control for Residential

Sections 5 through 8 of the Site Plan Control By-law are area specific which require certain development types including, but not limited to, single detached, semi-detached, and townhouse dwellings to obtain site plan control approval. Section 4 does not exempt certain development applications from obtaining site plan approval including, lane based townhouse blocks, and certain townhouse blocks in view corridors in new communities.

Amendments to the Planning Act under Bill 23 ([More Homes Built Faster Act, 2022](#)) prohibit the City from applying site plan control to developments of 10 units or less. As a result, amendments to the Planning Act under Bill 23 have rendered certain sections of the Site Plan Control By-law inoperable.

Site Plan Control for Outdoor Patios

Prior to Bill 109 ([More Homes for Everyone Act, 2022](#)) and Bill 23, the City used the site plan control process for the laying out and establishment of outdoor patios to conduct Heritage review and approval, review for landscaping and urban design considerations, review for zoning compliance, as well as reviews from Fire and Emergency Services. Heritage review under the current development process is conducted outside of site plan review, also as a result of

implementing Bill 23, and the City's ability to comment on landscaping or urban design considerations have been somewhat curtailed by the changes to the Planning Act.

Zoning

Prior to the enactment of the City's new Comprehensive Zoning By-law 2024-19, outdoor patios on private property were regulated by a variety of zoning by-laws. By-law 71-96 was the City's "Outdoor Patio By-law", which applied to all by-laws passed prior to 1996. By-law's 2009-196 (Markham Centre) and 177-96 applied different development standards and restrictions to the location and use of outdoor patios.

It is noted that in addition to the parking requirements of By-law 2009-196, Parking By-law 28-97 granted certain permissions for outdoor patio development without the application of additional parking standards.

The passing of By-law 2024-19 (Comprehensive Zoning By-law) consolidated the existing outdoor patio provisions including the parking requirements into a single by-law. By-law 2024-19 allows more flexibility for the outdoor patios, including the elimination of any prohibition or restriction on outdoor music. By-law 2024-19 also eliminates setbacks for tents located over a permitted outdoor patio and provides more flexibility for larger patios by increasing the permitted size from 40% to 50% of the area of the restaurant and does not require the provision of additional parking. By-law 2024-19 is currently under appeal to the Ontario Land Tribunal and is not yet in full force and effect.

The City's Zoning Preliminary Review (ZPR) process allows applicants to submit a proposed development concept to the Zoning Section of the Building Department to obtain a review for compliance of the applicable zoning by-law and obtain a list of any areas of non-compliance. Under the new site plan control process, a Zoning Preliminary Review is required as part of a complete application for site plan control.

Building Permits

Building permits are required for the installation of tents or structures over an outdoor patio, and compliance with the Building Code is required. The City's zoning by-laws do not supersede any requirement of the Building Code.

Road Occupancy Permits/Permission to Enter Permits

The establishment of an outdoor patio on a City Boulevard requires a Road Occupancy Permit. This includes the establishment of a patio in, or on City property outside of City Right of Way requirements.

Liquor Licensing

Establishments requiring a liquor license apply to the Alcohol Gaming Commission of Ontario for a liquor license. Part of that application includes Municipal clearance. Building Standards and Fire and Emergency Services are circulated and comment on life safety concerns governed under the Fire Code and Building Code.

OPTIONS/ DISCUSSION:

The proposed amendments to the Site Plan Control By-law would remove a barrier for restaurants and other licensed establishments to establish outdoor patios on private property. Through recent improvements to the City's site plan control process, necessary reviews exist outside of the site plan process, and can be captured through the heritage permit or liquor license process.

Fire and Emergency Services and Building Standards are currently circulated liquor license applications for review and comment. While there are opportunities to advise the applicant of situations of non-compliance, Fire and Emergency Services and Building Standards can only withhold endorsement of the liquor license and cannot prevent its issuance as they are not the

approval authority. Patios that do not require liquor licenses would not be circulated to these departments for review and comment.

Prospective applicants may submit a Zoning Preliminary Review to confirm compliance with the applicable zoning by-law. Through this process, outdoor patios that do not comply with the applicable zoning by-law will be advised of what relief is required from the zoning by-law.

The City's Site Plan Control By-law presently only permits tents to be erected for 12 weeks without requiring site plan approval. In passing the Comprehensive Zoning By-law, and in consideration of the normal patio season, Council indicated an intent to review the Site Plan Control By-law with respect to those timelines. Staff have proposed the length of time a tent may be erected without site plan to extend from April 1st to November 1st, which generally coincides with normal snow removal operations. Removing the site plan control process will streamline the approval process in this case.

Further amendments have been proposed to the Site Plan Control By-law that are presently inoperable due to amendments under the Planning Act. These proposed changes include:

1. The removal of site plan approval relating to Street townhouse dwellings and accessory buildings and structures where street townhouses front on local streets; and,
2. The removal of site plan approval requirement for certain development types in the Heritage Districts, Sabiston/Oakcrest Community, Victoria Square Community and, 10 Second Street areas of the City.

The proposed amendment to the Site Plan Control By-law for the Heritage Districts, Sabiston/Oakcrest Community, Victoria Square Community, and 10 Second Street brings those areas into alignment with the remaining parts of the City, and does not exclude site plan from non-residential developments, or residential developments in excess of 10 units.

CONCLUSION:

Planning Staff have evaluated the various components of the outdoor patio review process and are of the opinion that the elimination of the site plan control would remove a significant barrier for businesses to establish outdoor patios.

The process will rely more heavily on enforcement and may require operators to modify their patios if their installation is found to be non-compliant with Building or Fire Code requirements which does present a risk. The removal of site plan control does not limit the City's ability to ensure an outdoor patio complies with applicable legislation.

Applicants inquiring about the installation of a patio will be directed to complete a zoning preliminary review to confirm their proposal will comply with the applicable zoning by-law.

Establishments not requiring a liquor license may also submit a zoning preliminary review to confirm if the proposed patio complies with the applicable zoning provisions and should consult their existing approved site plan to ensure they are not encroaching into any required fire lane or egress.

Additional amendments to sections of the Site Plan Control By-law which remove the application of site plan control to developments less than 10 units aligns with the modifications to the Planning Act through Bill 23 and supports a more streamlined development process.

If approved, Planning Staff would update the City's website to assist operators in understanding the new process, and any compliance requirements for the establishment of their patio.

FINANCIAL CONSIDERATIONS:

The City's site plan control application fees and zoning preliminary review fees are based on the anticipated cost for review of the subject application.

HUMAN RESOURCES CONSIDERATIONS

Not applicable

ALIGNMENT WITH STRATEGIC PRIORITIES:

This Project aligns with the City’s strategic priority of Exceptional Services by Exceptional People by streamlining the development process and, reducing barriers to development.

BUSINESS UNITS CONSULTED AND AFFECTED:

The Building Standards Department and Fire and Emergency Services have been consulted on the proposed amendment. Both departments have raised concerns about a potential increased risk in non-compliance and have raised concerns that the process relies on enforcement rather than an approval process. They have also noted that their reviews of patios through the liquor license process are advisory only and cannot prescribe conformity with relevant safety standards (e.g. access, egress etc.).

Darryl Lyons, MCIP, RPP

Deputy Director, Planning and Urban Design

Giulio Cescato, MCIP, RPP

Director, Planning and Urban Design

Arvin Prasad, MCIP, RPP

Commissioner, Development Services

ATTACHMENTS:

Appendix A: Amendment to the Site Plan Control By-law 262-94

File path: Amanda\File 24 170441\Documents\Recommendation Report

BY-LAW 2024-XXXX

A By-law to amend By-law 262-94

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

1. That By-law 262-94, as amended, is hereby further amended as follows:

1.1 By deleting Section 2. (e) in its entirety.

1.2 By repealing and replacing Section 4 with the following:

“4 Exemptions

The following types of DEVELOPMENT may be undertaken without the approvals referred to in Section 3 of this by-law:

- (a) Buildings or structures used for agricultural or farming operations, except for any commercial mushroom farm, commercial riding establishment, commercial greenhouse, or a kennel which is located on a site less than 5 hectares.
- (b) Accessory buildings or structures not exceeding a total gross floor area of 50 square metres.
- (c) Additions or alterations to buildings and structures which have a total gross floor area less than 50 square metres.
- (d) Additions or alterations to buildings and structures which have a total gross floor area of 50 square metres or greater at the discretion of the Director of Planning and Urban Design or their designate.
- (e) Tents, marquees and similar structures to be erected for a temporary period the greater of:
 - (i) 12 weeks, or
 - (ii) Annually between April 1st, and November 1st.
- (f) Buildings or structures, and additions or alterations to buildings and structures, used for the purpose of enclosing mechanical equipment, staircases, passageways, entrances, porches, verandahs and similar structures.
- (g) Addition or alteration to an existing building or structure provided that:
 - (i) the enlargement, improvement or modification is contained wholly within the existing building or structure; and,
 - (ii) the number of required parking spaces is not increased by more than 10 percent relative to the amount of parking currently provided on the lands; and,

- (iii) the total area of open space on a lot which is used exclusively for landscaping is not decreased by more than 10 percent.
- (h) Buildings or structures destroyed or damaged by fire, explosion or flood or other similar cause, provided that:
 - (i) the reconstructed building or structure is used for the same purpose as the former building or structure; and,
 - (ii) the gross floor area and height of the reconstructed building or structure generally do not exceed those of the former building or structure; and,
 - (iii) the reconstructed building or structure is generally not located closer to any lot lines than the former building or structure.
- (i) Industrial equipment, machinery or storage tanks:
 - (i) that are not located closer than 6.0 metres to any lot line; and,
 - (ii) that are located a minimum of 15.0 metres from any lot line of any lot zoned or used for residential purposes; and,
 - (iii) where height does not exceed 9.0 meters”

1.3 By deleting Sections 6, 7, and 8 in their entirety.

1.4 By renumbering Sections 9, 10, and 11 to Section 6, 7, and 8 respectively.

2. All other provisions of By-law 2024-XXX, as amended, not inconsistent with the provisions of this By-law, shall continue to apply.

Read a first, second and third time and passed on -----.

Kimberley Kitteringham
City Clerk

Frank Scarpitti
Mayor



EXPLANATORY NOTE

BY-LAW 2024-____
A By-law to amend By-law 262-94, as amended

Address

Lands Affected

The proposed by-law amendment applies Citywide.

Purpose and Effect

The purpose of this report is to recommend changes to the Site Plan Control By-law, 262-94, as it relates to the laying out of outdoor patios, and to update the policies in response to other recent changes to the Planning Act.

