

Committee of the Whole (1) Report

DATE: Monday, June 29, 2020

WARD(S): ALL

TITLE: CITY OF VAUGHAN

ZONING BY-LAW AMENDMENT FILE Z.20.017

**TEMPORARY USE BY-LAW TO PERMIT TEMPORARY
OUTDOOR PATIOS FOR EATING ESTABLISHMENTS AND
BANQUET HALLS**

AMENDMENT TO SITE PLAN CONTROL BY-LAW

FROM: Nick Spensieri, Acting Deputy City Manager, Planning and Growth Management

ACTION: DECISION

Purpose

To seek approval from the Committee of the Whole to permit a citywide temporary use By-law to permit temporary Outdoor Patios and the temporary expansion of existing Outdoor Patios, both accessory to existing eating Establishments and Banquet Halls.

Report Highlights

- The City proposes to enact a citywide temporary use By-law to permit temporary Outdoor Patios and the temporary expansion of existing Outdoor Patios, both accessory to existing Eating Establishments and Banquet Halls.
- The By-laws would apply during any period where an emergency has been declared to exist in all or part of the City under section 4 of the *Emergency Management and Civil Protection Act* or November 2, 2020, whichever comes first.
- The Development Planning, Building Standards and the By-law and Compliance, Licensing and Permit Services Departments support the approval of temporary Outdoor Patios and the temporary expansion of existing Outdoor Patios, both accessory to existing Eating Establishments and Banquet Halls.

Recommendations

1. THAT Zoning By-law Amendment File Z.20.017 (City of Vaughan) BE APPROVED, to enact a temporary use By-law to permit temporary outdoor patios and the temporary expansion of existing outdoor patios, both accessory to existing Eating Establishments and Banquet Halls; and
2. THAT the City's Site Plan Control By-law 123-2013 be amended to exempt temporary outdoor patios and the temporary expansion of existing outdoor patios, both accessory to existing Eating Establishments and Banquet Halls from Site Plan Control.

Background

The City is proposing to enact a temporary use By-law to permit temporary Outdoor Patios and the temporary expansion of existing Outdoor Patios, both accessory to existing Eating Establishments and Banquet Halls, hereafter referred to as "temporary Outdoor Patios", on a citywide basis. Further, an amendment to the City's Site Plan Control By-law 123-2013 is required to exempt temporary Outdoor Patios from Site Plan Control. The By-laws would apply during any period where an emergency has been declared to exist in all or part of the City under section 4 of the *Emergency Management and Civil Protection Act* (the 'Emergency Order') or on November 2, 2020, whichever comes first.

The Committee of the Whole on May 20, 2020, adopted the following recommendation:

"That staff bring forward a report, if possible, to the May 27, 2020, Council meeting exploring the possibility of relaxing City By-laws and Building Standards to enable the expansion of outdoor patios when bars and restaurants are allowed to reopen in the City, including locating them in parking lots if permitted by their landlords, to offer relief for restaurant owners to recover financial losses faced due to the COVID-19 pandemic restrictions."

Vaughan Council on May 27, 2020 adopted the recommendation of the Committee of the Whole, as amended as follows:

"By approving the following in accordance with communication C19, from the Director & Chief Licensing Officer, By-law & Compliance, Licensing & Permit Services, dated May 27, 2020:

That Council adopt staff's recommendations and direct staff to:

1. Schedule a Public Hearing to receive comments from the Public and the Committee of the Whole on a City-wide Zoning By-law amendment to permit temporary Outdoor Patios and the expansion of existing outdoor patios, accessory to existing Eating Establishment Uses for a temporary period during the declared emergency.

2. Prepare a Temporary Use (Zoning) Patio By-law, to amend the City's Zoning By-law, in a manner acceptable to the City Solicitor.
3. Prepare a Temporary Outdoor Patio By-law that will prescribe the eligibility criteria and establish standards of operation in conjunction with the Temporary Use (Zoning) By-law, in a manner acceptable to City Solicitor.
4. Undertake any other subsequent technical amendments required, including any amendments as may be required to the City's Site Plan Control By-law 123-2013 to bring effect to Recommendations 1, 2 and 3."

Public Notice was provided in accordance with the Planning Act and Council's Notification Protocol

The City on June 4, 2020, mailed a Notice of Public Meeting to all registered Ratepayers Associations within the City of Vaughan. The Notice of Public Meeting was also posted on the City's website at www.vaughan.ca and published in the June 4, 2020, editions of the Vaughan Citizen and The Thornhill Liberal.

A Committee of the Whole (Public Meeting) was held on June 25, 2020, to receive comments from the public and the Committee of the Whole. No written submissions regarding the temporary Outdoor Patios were received by the Development Planning Department as of June 16, 2020. Staff will provide a Communication to Council to address any written comments received or comments expressed from the public and Vaughan Council at the Public Meeting.

The City of Vaughan continues to implement new measures and programs to support local businesses and entrepreneurs, consumers and the wellbeing of all citizens during the global COVID-19 pandemic. The Development Planning, Building Standards (Zoning) and By-law and Compliance, Licensing and Permit Services, have partnered to explore opportunities to permit temporary Outdoor Patios across the City to provide for appropriate social distancing and enable additional seating capacity.

Similar initiatives are being explored and have been initiated by a number of municipalities, including but not limited to, the City of Toronto, City of Markham, City of Guelph and the City of Hamilton.

Previous Reports/Authority

Previous reports related to this application are available at the following links:

[Council Communication May 27, 2020 - C19 - Director & Chief Licensing Officer, By-law Compliance, Licensing & Permit Services](#)

[Committee of the Whole - May 20, 2020 - Report 20, Item 30 - New Business - Restaurant Patio Expansion](#)

[Committee of the Whole Public Hearing - June 25, 2020 - Item 1 - City of Vaughan](#)

Analysis and Options

A Temporary Use By-law to permit Temporary Outdoor Patios is consistent with Provincial Policy Statement 2020

The Provincial Policy Statement 2020 ('PPS') provides policy direction on matters of provincial interest related to land use planning and development. The PPS is applied province-wide and provides for appropriate development while ensuring public health and safety, and the quality of the natural and built environment are protected. In accordance with Section 3(5) of the *Planning Act*, all land use decisions in Ontario "shall be consistent with" the PPS.

The proposal to enact a temporary use By-law to permit temporary Outdoor Patios is consistent with the PPS, specifically: Section 1.3.1 to encourage planning authorities to promote economic development and competitiveness by providing for an appropriate mix and range of employment uses to meet long-term needs; providing opportunities for a diversified economic base; and Section 1.7.1 to encourage long-term economic prosperity by promoting opportunities for economic development and community investment-readiness.

A temporary use By-law to permit temporary Outdoor Patios will promote economic development and implement a new measure and programs to support local businesses and entrepreneurs, consumers and the wellbeing of all citizens during the global COVID-19 pandemic. In consideration of the above, the Proposal is consistent with the PPS.

A Temporary Use By-law to permit Temporary Outdoor Patios conforms to A Place to Grow: Growth Plan for the Greater Golden Horseshoe 2019

A Place to Grow: Growth Plan for the Greater Golden Horseshoe 2019 ('Growth Plan') is intended to guide decision making on the development of land and includes encouraging compact built form, transit supportive communities, diverse land uses, and flexibility to capitalize on new economic and employment opportunities while providing certainty for traditional industries.

The Growth Plan encourages the concentration of population and employment growth within settlement areas and promotes the development of complete communities that offers a mix of jobs, local stores, services and housing types. In accordance with Section 3(5) of the *Planning Act*, Vaughan Council's planning decisions shall conform to the Growth Plan.

Section 2.2.1.4 – Applying the policies of this Plan will help in achieving complete communities, by featuring a diverse mix of land uses, including residential and employment uses, and convenient access to local stores, services, and public service facilities and expand convenient access to healthy, local, and affordable food options, including through urban agriculture. A temporary use By-law to permit temporary Outdoor Patios will assist local business Owners to regain financial loss during and

assist in the wellbeing of all citizens during the global COVID-19 pandemic. In consideration of the above, a temporary use By-law to permit temporary Outdoor Patios conforms to the Growth Plan.

A Temporary Use By-law to permit Temporary Outdoor Patios conforms to the York Region Official Plan 2010

The York Region Official Plan 2010 ('YROP 2010') guides economic, environmental and community building decision making across York Region, and describes how York Region will accommodate future growth and development while meeting the needs of existing residents and businesses.

YROP 2010 promotes innovation, economic diversity and resilience. Its policies intend to encourage investment and prosperity in a way that creates a competitive business environment. Temporary Outdoor Patios will help support hospitality sector workers and businesses impacted by the COVID-19 outbreak and allow for Eating Establishments and Banquet Halls to operate while safely accommodating patrons and staff. This temporary measure will allow the public to safely enjoy service that meets social distancing requirements and other public health guidelines. In consideration of the above, a temporary use By-law to permit temporary Outdoor Patios conforms to YROP 2010.

A Temporary Use By-law to permit Temporary Outdoor Patios conforms to Vaughan Official Plan 2010

Vaughan Official Plan 2010 ('VOP 2010') permits Eating Establishments and Banquet Halls including accessory Outdoor Patios in the following designations: "Low-Rise Mixed-Use"; "Mid-Rise Mixed-Use"; "High-Rise Mixed-Use"; "Employment Commercial Mixed-Use"; "Community Commercial Mixed-Use"; "Downtown Mixed-Use"; "Prestige Employment"; "Major Institutional"; and, "Theme Park and Entertainment". The proposed temporary use By-law would permit temporary Outdoor Patios during the Emergency Order. Temporary Outdoor Patios will allow for Eating Establishments and Banquet Halls to regain financial loss and accommodate for appropriate safety measures for its patrons and staff during the COVID-19 pandemic.

Section 10.1.2.4 of VOP 2010, enables the City to enact temporary use By-laws for the temporary use of land, buildings or structures. The temporary use must be: consistent with the general intent of VOP 2010; compatible with adjacent land-uses; temporary in nature; located in an area where sufficient servicing and transportation capacity exists; and, maintains the long-term viability of the lands for the uses permitted by VOP 2010.

Section 10.1.2.20 of VOP 2010, enables the City to consider Site Plan Control for new development. Section 10.1.2.25 allows the City to consider Site Plan Control to include design objectives, including but not limited to, compatibility, conflicts in land use with any adjacent sensitive uses, access routes, internal driveways, pedestrian walkways and parking configurations, suitable parking areas, services and utilities, grading, fencing, lighting, signage, and landscaping. Outdoor Patios are subject to Site Plan Control by the City's Site Plan Control By-law 123-2013. Site Plan Control for Outdoor

Patios is further discussed under the Amendments to Site Plan Control By-law 123-2013 Section of this report.

The proposal to enact a temporary use By-law to permit temporary Outdoor Patios conforms to VOP 2010.

A Temporary Use By-law is required to permit temporary Outdoor Patios accessory to Eating Establishments and Banquet Halls

Zoning By-law 1-88 permits Outdoor Patios accessory to Eating Establishments and Banquet Halls in a number of Commercial and Employment Zones. A draft Temporary Use By-law, including the proposed provisions are shown in Attachment 1. The proposed draft Temporary Use By-law would exempt temporary Outdoor Patios from the applicable provisions in Zoning By-law 1-88, on a temporary basis to expire two weeks after the Emergency Order is lifted or November 2, 2020, whichever comes first. The Temporary Use by-law includes the following provisions:

- temporary Outdoor Patios accessory to an Eating Establishment shall not exceed 100% of the gross floor area of the associated Eating Establishment
- temporary Outdoor Patios accessory to a Banquet Hall shall not exceed 50% of the gross floor area of the associated Banquet Hall
- temporary Outdoor patios can occupy required landscaped areas, parking areas to a total of 20% of the total parking provided on the lot
- no additional parking spaces are required for the temporary Outdoor Patio
- temporary Outdoor Patios shall not impede pedestrian or vehicular access or shall not be permitted in any yard between the building where the eating establishment is located and any Residential Zone

The draft temporary use By-law limits the size of a temporary Outdoor Patio to 100% of the area of the existing eating establishment and also caps the number of parking spaces it can occupy to 20% of the parking spaces on the property. The combination of these provisions would permit a temporary Outdoor Patio with a sufficient size to accommodate additional outdoor patron space and implement social distancing requirements and maintain sufficient parking on the property.

A temporary Outdoor Patio can be located in landscaped areas, thereby reducing the impact on available parking spaces on a property. In consideration of the social distancing requirements, the number of patrons expected at an eating establishment would not exceed the original capacity of the eating establishment and an outdoor patio otherwise permitted by Zoning By-law 1-88.

Similarly, the draft temporary by-law limits the size of an Outdoor Patio to 50% of the area of a banquet hall with the same 20% cap on the number of parking spaces the patio can occupy.

It is noted a tent is also permitted as part of a temporary Outdoor Patio accessory to either an Eating Establishment or Banquet Hall provided it does not exceed 60 m² and

is located a maximum of 3 m from any building. Any tent greater than 60 m² would require a building permit and must proceed through a typical building permit process.

An amendment to Site Plan Control By-law 123-2013 is required to exempt Temporary Outdoor Patios from Site Plan Control

Outdoor Patios are subject to the City's Site Plan Control By-law 123-2013. This By-law delegates to the Commissioner of Planning or designate (Director of Development Planning) authority to make minor changes to existing or approved buildings or site alterations. This includes any amendments to complex agreements or Site Plan Letter of Undertakings for all classes of development where the application complies with the zoning by-law, the use and development of the lands provided for by the original agreement remains substantially unaltered, and where no City Department or public agency objects to the application.

Zoning By-law 1-88 also requires Outdoor Patios to be developed in accordance with an approved site plan. An amendment to the City's Site Plan Control By-law is required to exempt the temporary Outdoor Patios from the provisions of Site Plan Control. A draft By-law to amend Site Plan Control By-law 123-2013 is included as Attachment 2.

Heritage Vaughan and Council approval will not be required to permit Temporary Outdoor Patios in Heritage conservation Districts

Under the *Ontario Heritage Act*, RSO 1990, c O.18, any alterations to a Heritage property, or property within a Heritage Conservation District requires Heritage Vaughan review and approval of Council. In consideration of the Outdoor Patios being temporary (i.e. no permanent structures) and will not alter a heritage dwelling, approval from Heritage Vaughan and Council is not required.

A Temporary Outdoor Patio By-law will establish operating criteria for Temporary Outdoor Patios

Staff is proposing to enact a Temporary Outdoor Patio By-law to establish guidelines and criteria for temporary Outdoor Patios to address various operating requirements and related safety concerns, including but not limited to, physical delineation (e.g. curb-stops and fencing) and physical distancing. There is no intent to permit the construction of permanent structures, decks and other fixtures requiring a building permit. The Temporary Outdoor Patio By-law requires the Owner/applicant to register and acknowledge compliance with municipal requirements before extending or establishing temporary outdoor patios. There is no additional application process and there are no fees to register. The registration form will be available on-line.

Eating Establishments and Banquet Halls providing for liquor consumption must have a liquor license, including for an Outdoor Patio area, in accordance with the Alcohol & Gaming Commission of Ontario ('AGCO'). The AGCO will not require licensees to apply or pay a fee for these temporary extensions. Licensed establishments must ensure they have municipal approval and meet all other applicable requirements. The Temporary Outdoor Patio By-law also includes requirements of the AGCO (where service of Alcohol is permitted), other standards recommended by public health officials

and other reasonable standards as determined by the City's Chief Licensing Officer, Fire Chief and Chief Building Official.

Staff will publicize the acceptable standards and regulations in the Temporary Outdoor Patio by-law requiring Eating Establishment and Banquet Hall owners to determine if they meet the criteria and thereby qualify to add and/or expand their patio. This approach is founded on a self-governing model that places the onus on each establishment to self-regulate and ensure voluntary compliance, including the eligibility to establish an outdoor patio where one currently does not exist or expand an existing outdoor patio where possible. These standards and regulations do not interfere with landlord tenant obligations and/or necessary private commercial insurance requirements.

Timing of Enactment and Duration of the Temporary Use, Temporary Outdoor Patio and Site Plan Control Amendment By-laws

The proposed By-laws will come into effect once Eating Establishments are able to resume dine-in operations, even if restricted to outdoor dine-in operations and once the Temporary Use By-law is in full force and effect after the 20-day appeal period as required by the *Planning Act* has ended, and no appeal is received.

The proposed By-laws would expire two weeks after the Emergency Order is lifted or November 2, 2020, whichever comes first.

Financial Impact

There are no financial implication resulting from this report.

Broader Regional Impacts/Considerations

Not applicable.

Conclusion

The proposal to enact a temporary use by-law to permit temporary Outdoor Patios has been reviewed in consideration of the applicable Provincial policies, the policies of YROP 2010 and VOP 2010, the requirements of Zoning By-law 1-88, and comments from City Departments. The proposed temporary use By-law is consistent with Provincial policy, conforms to the Growth Plan and YROP 2010, and maintains the intent of VOP 2010.

The Development Planning Department, Building Standards Department and the By-law and Compliance, Licensing and Permit Services Department supports the approval of a temporary use by-law to permit temporary Outdoor Patios and the temporary expansion of existing Outdoor Patios, both accessory to existing Eating Establishments and Banquet Halls. Temporary Outdoor Patios will assist business Owners to regain financial loss and allow for appropriate safety measures to accommodate patrons and staff during the COVID-19 pandemic. In addition, amendments to the City's Site Plan Control by-law and the enactment of a Temporary Outdoor Patio By-law are proposed to implement the proposal to permit temporary Outdoor Patios.

For more information, please contact: Mary Caputo, Senior Planner, Development Planning Department, extension 8635.

Attachments

1. Draft Temporary Use By-law
2. Draft Site Plan Control Amendment By-law

Prepared by

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