

**Report to  
Rapport au:**

**Planning Committee  
Comité de l'urbanisme  
25 June 2020 / 25 juin 2020**

**Agriculture and Rural Affairs Committee  
Comité de l'agriculture et des affaires rurales  
July 8, 2020 / 8 juillet 2020**

**and Council  
et au Conseil  
15 July 2020 / 15 juillet 2020**

**Submitted on 19 June 2020  
Soumis le 19 janvier 2018**

**Submitted by  
Soumis par:**

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**Economic Development and Long-Range Planning / Développement économique et  
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**Ward: CITY WIDE / À L'ÉCHELLE DE  
LA VILLE**

**File Number: ACS2020-PIE-EDP-0019**

**SUBJECT: Temporary Zoning By-law Amendment – Outdoor Commercial Patios and Pop-up Retail Stores**

**OBJET: Modification temporaire du *Règlement de zonage* – terrasses commerciales et magasins de détail**

#### **REPORT RECOMMENDATIONS**

1. That Planning Committee / Agriculture and Rural Affairs Committee recommend Council approve an amendment to Zoning By-law 2008-250 to relax certain requirements and provisions on outdoor commercial patios, and for retail stores City-wide, as detailed in Document 1.
2. That Planning Committee approve the Consultation Details Section of this report be included as part of the ‘brief explanation’ in the Summary of Written and Oral Public Submissions, to be prepared by the Office of the City Clerk and submitted to Council in the report titled, “Summary of Oral and Written Public Submissions for Items Subject to *the Planning Act* ‘Explanation Requirements’ at the City Council Meeting of July 15, 2020, subject to submissions received between the publication of this report and the time of Council’s decision.
3. That Agriculture and Rural Affairs Committee approve the Consultation Details Section of this report be included as part of the ‘brief explanation’ in the Summary of Written and Oral Public Submissions, to be prepared by the Office of the City Clerk and submitted to Council in the report titled, “Summary of Oral and Written Public Submissions for Items Subject to *the Planning Act* ‘Explanation Requirements’ at the City Council Meeting of July 15, 2020, subject to submissions received between the publication of this report and the time of Council’s decision.

#### **RECOMMANDATIONS DU RAPPORT**

1. Que le Comité de l’urbanisme et le Comité de l’agriculture et des affaires rurales recommandent au Conseil d’approuver une modification au *Règlement de zonage* (n° 2008-250) en vue d’assouplir, à l’échelle de la ville, certaines exigences et dispositions relatives aux terrasses commerciales et aux magasins de détail, comme l’indique le document 1.
2. Que le Comité de l’urbanisme donne son approbation à ce que la section du présent rapport consacrée aux détails de la consultation soit incluse en tant que « brève explication » dans le résumé des observations écrites et orales du public, qui sera rédigé par le Bureau du greffier municipal et

soumis au Conseil dans le rapport intitulé « Résumé des observations orales et écrites du public sur les questions assujetties aux ‘exigences d'explication’ aux termes de la *Loi sur l'aménagement du territoire*, à la réunion du Conseil municipal prévue le 15 juillet 2020 », à la condition que les observations aient été reçues entre le moment de la publication du présent rapport et le moment de la décision du Conseil.

3. Que le Comité de l'agriculture et des affaires rurales donne son approbation à ce que la section du présent rapport consacrée aux détails de la consultation soit incluse en tant que « brève explication » dans le résumé des observations écrites et orales du public, qui sera rédigé par le Bureau du greffier municipal et soumis au Conseil dans le rapport intitulé « Résumé des observations orales et écrites du public sur les questions assujetties aux ‘exigences d'explication’ aux termes de la *Loi sur l'aménagement du territoire*, à la réunion du Conseil municipal prévue le 15 juillet 2020 », à la condition que les observations aient été reçues entre le moment de la publication du présent rapport et le moment de la décision du Conseil.

## **BACKGROUND**

At its meeting of June 10<sup>th</sup>, Council directed that a temporary Zoning By-law Amendment be introduced amending the regulations relating to restaurants, retail stores, and outdoor commercial patios. The purpose of this amendment is to relax certain restrictions pertaining to patio use in order to allow greater flexibility in the permitted size and location of these features to assist with economic recovery efforts in relation to the COVID-19 pandemic and ensure that these features properly accommodate the continued need for physical distancing between patrons. Similar flexibility is proposed for outdoor retail areas associated with a retail store, which are similar in form to outdoor patios.

The proposed By-law will also allow greater flexibility for patios and “pop-up” retail areas to be located on existing parking lots and private lands, whether on the same site as or on an adjacent lot to an associated use. Such patios will be permitted to temporarily be located on parking lots or spaces even where those parking spaces are required under the Zoning By-law.

### **Summary of temporary Zoning By-law amendment proposal**

Current zoning provisions regulating the permitted location of outdoor commercial patios are under Section 85 of the Zoning By-law. Patios must be separated at least 30 metres

from any property within a Residential zone where not screened by a building and must be separated by at least 75 metres from such properties where not screened at all.

In addition, Section 85 states what uses these commercial patios are to be associated with and prohibits these patios from occupying parking spaces, driveways, or aisles that are required to be provided under the Zoning By-law. Outdoor sales space for retail uses is also subject to the rules for maintaining required parking, driveways and aisles.

The proposed temporary amendment will:

- relax the requirements pertaining to residential separation, allowing patios to temporarily locate within 30 metres of a residential zone;
- exempt the screening requirements for patios located close to residential zones;
- prohibit patios located within 30 metres of a residential zone from containing amplified sound systems, to mitigate the potential impacts of such patios;
- allow patios and “pop-up” retail areas to locate on parking lots, even where the parking provided is normally required under the Zoning By-law for other uses;
- allow patios and “pop-up” retail in association with a greater range of uses than presently permitted; and
- allow patios to locate on nearby lots relative to the business they are serving, whereas Section 85 requires patios to locate on the same lot.

As per the Motion from Council, it is intended to apply these regulations during the current patio season, and as such, the temporary By-law is intended to expire on October 31, 2020.

## **DISCUSSION**

### Provincial Policy Statement

Staff have reviewed this proposal and have determined that it is consistent with the 2014 and 2020 Provincial Policy Statements.

### **Implementation**

It is noted that as part of Council’s direction with respect to outdoor commercial patios, business practices were adopted pertaining to the licensing and intended enforcement of these features, particularly where located near a residential zone. These will be implemented by staff within the Public Realm and Urban Design Branch. It is noted that

some of these practices are not within the purview of zoning and thus do not form part of the applicable regulations to be brought forward through this temporary amendment.

Of particular note is the requirement for businesses establishing patios within 30 metres of a residential zone to notify abutting residents, as well as the Ward Councillor, of their proposal. In this regard, staff would note that should this amendment be approved, a patio on private property would be fully permitted as-of-right under zoning regardless of its proximity to residential zones, even where abutting residents or the local Councillor would be in opposition. Any concerns associated with how the patio is managed would be subject to enforcement through existing nuisance By-laws.

The restriction on amplified sound systems for patios can be implemented and enforced through the Zoning By-law, and forms part of the details of recommended zoning set out in Document 1.

With all this in mind, it should be noted that expanded permissions for patios and outdoor retail spaces under the Zoning By-law will not override or negate the need for food premises or similar businesses to obtain the proper licensing under the Licensing By-law, nor licensing from provincial bodies such as the Alcohol and Gaming Commission (AGCO). In addition, any requirements for physical distancing and table separation as set by Ottawa Public Health would be fully applicable. While the patio will be allowed as-of-right, noise and property standards by-laws will be applicable to their operation.

### **Monitoring**

The proposed By-law amendment represents a number of significant changes to the current requirements that apply to outdoor commercial patios, particularly in relation to patios near residential zones, as well as the ability of such spaces to use parking spaces or parking lots.

As the temporary zoning is only intended to apply during 2020, staff intend to monitor the proposed regulations in order to determine if it is appropriate to extend these same regulations in the future, whether on a temporary or permanent basis.

### **RURAL IMPLICATIONS**

The proposed temporary By-law is City-wide and will therefore apply to zones within the rural area, including all villages, where restaurants or other uses that may be associated with an outdoor commercial patio are permitted.

### **COMMENTS BY THE WARD COUNCILLOR(S)**

This is a city-wide report – not applicable.

## **LEGAL IMPLICATIONS**

The recommended zoning by-law is temporary in nature and as such does not provide any permanent zoning rights. Thus, no legal, non-conforming rights will accrue to anyone who to the end of the period utilizes the permissions granted by the temporary zoning by-law. As outlined in the report, the duration of the by-law is until October 31, 2020 and thus by-law will provide permissions for only a four-month period.

Given the limited scope of this by-law and the extraordinary circumstances in place at this time, it is Legal Services option that there are no legal impediments to the adoption of the by-law.

## **RISK MANAGEMENT IMPLICATIONS**

There are no risk implications.

## **ASSET MANAGEMENT IMPLICATIONS**

There are no asset management implications.

## **FINANCIAL IMPLICATIONS**

There are no direct financial implications.

## **ACCESSIBILITY IMPACTS**

The content of this report does not negatively impact people with disabilities or seniors.

## **TERM OF COUNCIL PRIORITIES**

This project addresses the following Term of Council Priorities:

- Economic Growth and Diversification
- Thriving Communities

## **SUPPORTING DOCUMENTATION**

Document 1: Details of Recommended Zoning

Document 2: Consultation Details

## **CONCLUSION**

Staff recommend the proposed changes for approval as they will allow more flexibility in the use of outdoor patio space and parking areas on private lands to support economic

recovery efforts for restaurants and food businesses, in a manner that is consistent with the continued need for physical distancing measures during the COVID-19 pandemic.

**DISPOSITION**

Zoning and Interpretations Unit, Policy Planning Branch, Economic Development and Long Range Planning Services to prepare the implementing by-law and forward to Legal Services.

Legal Services, Innovative Client Services Department to forward the implementing by-law to City Council.

Planning Operations Branch, Planning Services to undertake the statutory notification.

## Document 1 – Details of Recommended Zoning

Amend Zoning By-law 2008-250 as follows:

### 1. Amend Section 85 (Outdoor Commercial Patios) by adding subsection with provisions similar in effect to the following:

(7) The following applies to all permitted outdoor commercial patios between July 15, 2020 and October 31, 2020:

- (a) Despite Subsection 85(1), an outdoor commercial patio is permitted in any zone other than a residential zone, where associated with a permitted use,
- (b) an outdoor commercial patio is not required to be on the same lot as its associated primary use, but must be located within the same city block as or directly across the street from the associated use;
- (c) Subsection 85(3) does not apply;
- (d) Despite subsection 85(4), an outdoor commercial patio may use required or provided parking spaces, driveways or aisles, except in the case of an accessible parking space as defined under the Traffic and Parking By-law;
- (e) Where an outdoor commercial patio encroaches on required parking spaces in accordance with (d), the lot on which it is located is deemed not to be in non-compliance with the requirements of Section 101 as a result of said encroachment.
- (f) Where located within 30 m of a residential zone, an outdoor commercial patio is not permitted to contain an amplified sound system for music or entertainment purposes.

(8) Subsections (7) and (8) are repealed on October 31, 2020.

### 2. Amend Section 100 of the Zoning By-law to add the following as subsection (X) with wording similar in effect to the following:

(x) The following applies between July 15, 2020 and October 31, 2020:

- (a) Despite anything to the contrary, outdoor commercial patios permitted under 85(7) and outdoor retail spaces in association with a permitted retail use may locate on the same lot or on a lot within the same city block as or across the street from the permitted use., and may locate on required or provided parking spaces or aisles, except in the case of an accessible parking space as defined under the Traffic and Parking By-law;

(b) no parking is required for a permitted outdoor retail space.

(9) Subsection (x) is repealed on October 31, 2020.

**Document 2 – Consultation Details**

Following the notice of motion by Council on June 10, 2020 to bring a proposed zoning amendment to Planning Committee on June 25, 2020 and to Agriculture and Rural Affairs Committee on July 2, 2020, notification and public consultation per the Public Notification and Public Consultation Policy approved by City Council for Zoning By-law amendments has not been undertaken.

Notification of the public meeting has been undertaken in accordance with the alternative measures of the Official Plan.