



REFERRAL REPORT

Report Date: September 28, 2020
Contact: Chris Robertson
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RTS No.: 14062
VanRIMS No.: 08-2000-20
Meeting Date: October 6, 2020

TO: Vancouver City Council
FROM: General Manager of Planning, Urban Design and Sustainability
SUBJECT: Zoning and Development By-law Amendments to allow Temporary Patios for Businesses on Private Property

RECOMMENDATION

- A. THAT the General Manager of Planning, Urban Design and Sustainability be instructed to make an application to amend the Zoning and Development By-law to allow temporary patios for businesses on private property until October 31, 2021, generally in accordance with Appendix A.
- B. THAT the application be referred to a Public Hearing.
- C. THAT the Director of Legal Services be instructed to prepare the necessary amending By-law, generally in accordance with Appendix A, for consideration at Public Hearing.

REPORT SUMMARY

This report responds to Council's Motion of September 16, 2020 directing staff to extend the Temporary Expedited Patio Program and include allowance for weather protection.

This report proposes amendments to the Zoning and Development By-law to extend the temporary allowance of outdoor patios for businesses on private property from October 31, 2020 to October 31, 2021 and to grant the Director of Planning discretionary power to vary other regulations to enable enclosure of patios.

On June 30, 2020, to support businesses and to better enable social distancing, Council approved amendments to allow the Director of Planning to vary restrictions within the Zoning and Development By-law that require certain uses, such as a lounge accessory to a brewery or distillery, to be carried on completely within an enclosed building for a period up to and including October 31, 2020.

COUNCIL AUTHORITY/PREVIOUS DECISIONS

On July 9, 2013, Council enacted amendments to the M-1, M-2, I-1, I-2, I-3, IC-1, IC-2 and IC-3 industrial districts of the Zoning and Development By-law to allow lounge use accessory to a brewing or distilling use, to a maximum size of 80 sq. m, and wholly contained within the principal building.

On May 13, 2020, Council passed a Motion on Flexible, Innovative and Expedited Patio Permitting which emphasized Council's commitment to supporting the business community, and specifically hard hit restaurants. The Motion focused on developing new and nimble approaches to support restaurant businesses in meeting Public Health physical distancing requirements while continuing to sustain themselves during the pandemic. Emphasis was placed on providing pre-prepared templates/types of patios to improve speed and support staff in prioritizing this work.

On May 27, 2020, Council considered a staff report on Enabling Temporary Expansion of Liquor Primary and Manufacturer Liquor Service Areas and approved the option of informing the General Manager of the Liquor and Cannabis Regulation Branch in writing that Council pre-approves all liquor primary and manufacturer establishments in the City of Vancouver who may apply for expanded liquor service area before October 31, 2020. Council also temporarily waived the fee for assessing and providing comments to the Province on an application for a temporary amendment to a liquor licence for the same time period.

On June 30, 2020, Council enacted amendments to the Zoning and Development By-law to temporarily allow outdoor patios for businesses on private property until October 31, 2020 on sites where patios are currently not permitted and are deemed suitable by the Director of Planning.

On September 16, 2020, Council passed a Motion on 'Extending Pop-Up Patios This Fall and Winter and Making Pop-Up Patios a Part of Every Summer in Vancouver', which was a direct recognition of the economic impact the COVID-19 pandemic has had on the City's restaurant and hospitality sector. The Motion focussed on the positive response to the pop-up patio program and actions required to extend the Temporary Expedited Patio Program over the winter and further in the future. On September 18, 2020, the Province also approved an extension to its Temporary Expanded Service Area Authorization allowing for its continuation through to October 31, 2021.

CITY MANAGER'S/GENERAL MANAGER'S COMMENTS

The City Manager recommends approval of the foregoing.

REPORT

Background/Context

Since the onset of the COVID-19 pandemic, many businesses in the City have been responding to the physical distancing measures set by the Office of the Public Health Officer (PHO). On May 22, 2020, the Provincial Liquor and Cannabis Regulation Branch (LCRB) approved policy that permits a Temporary Expanded Service Area Authorization to be issued to food primary,

liquor primary, and manufacturer licenses to support liquor licensed establishments in accommodating the same number of patrons while complying with PHO distancing and public gathering requirements. The temporary extension of service areas was originally set to expire on October 31, 2020. On September 18, 2020, the LCRB extended the Temporary Expanded Service Area Authorization until October 31, 2021.

To expedite businesses' ability to take advantage of the Province's authorization for a temporary expanded service area, on May 27, 2020, Council pre-approved all liquor primary and manufacturer establishments in the City who apply to the Province for an expanded liquor service area (i.e. patio) before October 31, 2020. Council also temporarily waived the associated fee for providing comments to the Province on an application for a temporary amendment to a liquor license for the same time period.

In addition, the City's Temporary Expedited Patio Program allowed businesses to apply for a free temporary patio permit, on public property in-front of or besides the building (i.e. on street parking or sidewalk space) or on private property.

On June 30, 2020, to enable better access to these temporary Programs, Council also enacted a temporary exception to the restrictions within the Zoning and Development By-law that require certain uses to be carried on wholly within a completely enclosed building. Prior to this decision regulations in some district schedules prohibited certain uses, such as accessory lounges for liquor manufacturers, restaurants, retail stores, neighbourhood grocery stores and cabarets, from having a patio on private property as the use must be carried out entirely within an enclosed building.

On September 16, 2020, Council unanimously approved a Motion to extend the city's temporary patios this fall and winter and to make them part of every summer season. This report relates solely to the temporary amendments necessary to the Zoning and Development By-law to enable the extension of the Temporary Expedited Patio Program on private property. Separate reports will be brought forward to provide an update on the Program and seek approval for other By-law changes needed to enable the extension of the Program.

Strategic Analysis

Proposed Zoning and Development By-law Amendment

In response to the September 16, 2020 Motion, an amendment to the Zoning and Development By-law is needed to continue to allow flexibility to approve patios on private property for restricted uses beyond the current date of October 31, 2020. An extension to October 31, 2021 is proposed which would align with the Temporary Expanded Service Area Authorization by the Provincial Liquor and Cannabis Regulation Branch.

To allow for patios to be temporarily covered or enclosed, Director of Planning discretion to vary any regulation in a District Schedule is proposed to enable such a development. This power is needed because the addition of a cover to a patio, where it is supported by posts, creates floor space and such a development may be restricted by provisions within district schedule. For example, where an existing uncovered patio is on a site and the Floor Space Ratio has been maximized; it would not be possible to add a cover with posts to the patio unless there is an ability to vary the Floor Space Ratio.

The proposed amendment is to strike section 10.29A and 10.29A.1:

“10.29A Temporary permission to carry on a use outside of a completely enclosed building

- 10.29A.1 Notwithstanding a condition of use in a district schedule requiring that a use be carried on wholly within a completely enclosed building, the Director of Planning may permit a use to be carried on outside of a completely enclosed building for a period up to and including October 31, 2020, and may vary any other regulation in a district schedule required to enable that use for that period.”

And substitute with the following:

“10.29A Temporary patios

- 10.29A.1 For the purposes of this section 10.29A, “temporary patio” means a patio permitted on a temporary basis only, for a period up to and including October 31, 2021.
- 10.29A.2 Notwithstanding a condition of use in a district schedule requiring that a use be carried on wholly within a completely enclosed building, the Director of Planning may permit a temporary patio to be carried on outside of a completely enclosed building.
- 10.29A.3 The Director of Planning may vary any regulation in a district schedule in order to enable the enclosure of a temporary patio.”

If the proposed Zoning and Development By-law amendment is approved an existing patio would be able to apply for an extension of time of the existing development permit and terms of approval. If the proposal is to winterize an existing patio by adding a roof and /or partially enclosing the space a new and separate development permit would be required.

CONCLUSION

This report recommends amendments to the Zoning and Development By-law to allow the Director of Planning to continue to vary requirements for certain service uses to be carried on wholly within a completely enclosed building until October 31, 2021. This would allow patios on private property for uses such as brewery and distillery lounges, retail stores, cabarets, and in some cases, neighbourhood grocery stores and restaurants, which currently are not permitted and existing permits for patios to be extended. It also proposes the introduction of Director of Planning discretion to vary any regulation in a district schedule in order to enable the enclosure of a temporary patio and allow the patio to better operate over fall and winter.

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**Draft By-law to Amend
Zoning and Development By-law No. 3575
Regarding Temporary Patios**

Note: A By-law will be prepared generally in accordance with the provisions listed below, subject to change and refinement prior to posting.

1. This By-law amends the indicated provisions of the Zoning and Development By-law No. 3575.
2. Council strikes out section 10.29A and substitutes the following:

“10.29A Temporary patios

- 10.29A.1 For the purposes of this section 10.29A, “temporary patio” means a patio permitted on a temporary basis only, for a period up to and including October 31, 2021.
- 10.29A.2 Notwithstanding a condition of use in a district schedule requiring that a use be carried on wholly within a completely enclosed building, the Director of Planning may permit a temporary patio to be carried on outside of a completely enclosed building.
- 10.29A.3 The Director of Planning may vary any regulation in a district schedule in order to enable the enclosure of a temporary patio.”.

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