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Commercial Rooftop Patios Staff Report to Council

Report Number: 2021-10

Department(s): Planning Services & Regulatory Services

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Meeting Date: February 22, 2021

Recommendations

1. That the report entitled Commercial Rooftop Patios dated February 22, 2021 be received; and,
2. That the Commercial Rooftop Patios Zoning By-law Amendment be approved; and,
3. That Business Licence By-law 2020-31 be amended to include new regulations for Commercial Rooftop Patios; and,
4. That Outdoor Serving Area By-law 2016-29 be repealed and its regulations relocated into Business Licence By-law 2020-31;
5. That the modifications to the Town's Site Plan Application Process Manual outlined in this report be approved;
6. That a new fee for a modified "quick" site plan application specific to Commercial Rooftop Patios of \$550 be created and waived for 2021 as a COVID response to support local businesses;
7. That the Business Licence fee, specifically for Commercial Rooftop Patios of \$374, also be waived for 2021 as a COVID response to support local businesses; and,
8. That Staff be authorized and directed to do all things necessary to give effect to this resolution.

Purpose

This report provides recommendations to amend the Zoning By-laws and Business Licence By-law 2020-31 in order to licence and regulate Commercial Rooftop Patios. This report also recommends the creation of design guidelines for rooftop patios and amendments to the Site Plan Application Process Manual creating a new approval process. Finally, in addition to the introduction of a new licensing framework for Commercial Rooftop Patios, Town staff are also recommending the Town's Outdoor Serving Area By-law 2016-29 be repealed and its provisions be included in Business Licence By-law 2020-31 for clerical and housekeeping purposes.

Background

Zoning By-law

The deficiencies of the Zoning By-law in regulating Commercial Rooftop Patios was highlighted during the first phase of a housekeeping review of Zoning By-law 2010-40. At the time, dealing with Commercial Rooftop Patios was put on hold for additional research to be completed. Then earlier this year it was brought forward again by a motion from Council:

“That staff be directed to schedule a Statutory Public Meeting for the purpose of outlining specific use permissions related to ‘Commercial Rooftop Patios’, addressing matters such as:

- maximum size (percentage of rooftop or gross floor area)
- associated uses for which a ‘Commercial Rooftop Patio’ may be permitted
- design (i.e. site plan) requirements
- compliance with licensing and noise by-laws”

Staff initiated a rezoning process and the Public Meeting was held December 14, 2020.

Through the rezoning process it was determined that both the Zoning By-laws and Licensing By-laws would have to be in concert to properly regulate and process applications for Commercial Rooftop Patios. Thus staff are now bringing forward amendments for both by-laws. In addition, site plan guidelines give staff, Council and the public a design framework for how to create rooftop patios that are complimentary to surrounding uses and provide businesses an opportunity to expand.

Business Licence By-law

Legislative Authority

The *Municipal Act* allows the Town to provide for a system of licences with respect to certain classifications of business by adopting a licensing by-law. As specified in the *Municipal Act*, a licensing by-law should relate to consumer protection, the economic and social well-being of the municipality, and the health, safety, and well-being of

persons in the municipality. Conditions may be imposed on a licence to ensure a business is compliant with the regulations established to reflect community objectives.

The Town’s authority under the Municipal Act to enact licensing by-laws provides greater flexibility. By requiring a licence for certain activities (i.e. operating an outdoor or rooftop patio), the Town can ensure that the requirements of other legislative regimes, such as the Alcohol and Gaming Commission of Ontario, Ontario Building and Fire Codes, and the Planning Act are met to confirm the safety of residents and visitors.

A business licence is only issued after specific requirements and conditions have been met and the renewal of a licence occurs on an annual basis to confirm conditions are being adhered to. Following the issuance of a business licence, a municipality may use its business licence by-law as a useful and powerful tool for providing regulatory oversight for businesses.

Historical Reference

On July 19, 1999, Town Council adopted By-law 1999-93 for the purpose of introducing a new licensing framework for Outdoor Serving Areas (ground-level, liquor licensed outdoor patios) within the Town of Newmarket. Since its initial adoption, several amendments have been introduced in relation to outdoor patios. The most notable change occurred on June 7, 2016 when Town Council adopted amendments to allow for businesses located on Main Street to apply for and obtain a business licence to operate an outdoor patio on Town-owned lands.

On June 29, 2020, Town Council adopted Business Licence By-law 2020-31. This by-law is intended to be a generic and central by-law for all stationary businesses that require a business licence within the Town of Newmarket. Due to the introduction of new regulations for Commercial Rooftop Patios, Town staff are also proposing to repeal the Outdoor Serving Area By-law and transfer its regulations under the Business Licence By-law 2020-31 for clerical and housekeeping purposes.

Discussion

The Town’s Zoning By-laws 2010-40 & 2019-06 currently define a Patio, Commercial Rooftop; while the Town’s Zoning By-laws define this use, they do not list it as a “permitted” use, nor are there any regulations or standards for the use in the By-laws. When this was initially highlighted through the housekeeping review, Council asked how other municipalities were dealing with commercial rooftop patios. Below is a scan of York Region and some additional municipality’s regulations for these patios.

Jurisdiction Scan

Municipality	Regulations
Aurora	None.

Vaughan	<ul style="list-style-type: none"> • Ensures that maximum height for the zone is maintained. • Prohibited adjacent to residential zone or use
Richmond Hill	None.
Whitchurch-Stouffville	None.
Georgina	<ul style="list-style-type: none"> • Not permitted as of right (outside Covid times); requires a Minor Variance.
Markham	<ul style="list-style-type: none"> • Prohibited adjacent to a residential zone or use. • Music and entertainment prohibited when abutting a residential zone or use.
King	None.
East Gwillimbury	None.
Barrie	<ul style="list-style-type: none"> • A guard rail is required and seating cannot be placed within 1m of building edge.
Waterloo	<ul style="list-style-type: none"> • Only permitted in zones which permit restaurant, café, or bake shop. • Prohibited within 40m of low rise residential lot line. • Cannot extend beyond roof of building. • Where an abutting lot is zoned for residential purposes or contains a building(s) with one or more dwelling units, a minimum one-point-eight metre (1.8m) tall Acoustical Wall shall be erected along the portion of the perimeter of the outdoor rooftop patio that is generally parallel to the rear lot line and side lot line. • Max floor area of 50sq.m per building. • Roofed area cannot be fully enclosed and cannot exceed 20% of patio area. • Primary access must be interior (to and from the bldg.) • Cannot have live entertainment (music, dancing, etc)
London	<ul style="list-style-type: none"> • Maximum size is 50% of the capacity of the restaurant or 50 persons which ever is greater
Milton	<ul style="list-style-type: none"> • Located directly above the restaurant • Not permitted on any lands abutting a residential zone

As per the above chart, in York Region Commercial Rooftop Patios are not something that is overly regulated. But if we look beyond York Region, there is a wider variety of regulations. Waterloo stands out as having the most prescriptive regulations. Whereas Barrie, London and Milton have a few regulations each.

Generally where Commercial Rooftop Patios are regulated, the regulations look to control size, location and mitigate any impact on nearby residential uses. It is common for municipalities prohibit them adjacent to residential zones.

Zoning By-law Amendment

This proposed zoning by-law amendment will amend both zoning by-laws, By-law 2019-06 which is the implementing zoning by-law for the Urban Centers Secondary Plan and By-law 2010-40 which is the zoning by-law for the rest of the Town. Both By-laws deal with Commercial Rooftop Patios in the same manner and require the same updating amendments.

The amendments propose to permit Commercial Rooftop Patios as accessory to a restaurant, a banquet hall, and other commercial uses. This would allow them in all Commercial Zones, the Mixed Use Zones of the Urban Centres Secondary Plan, the downtown and all Employment Zones. The amendment will also update the definition for Commercial Rooftop Patios from: “any portion of a rooftop dedicated as a seasonal outdoor serving area that is an accessory use to a restaurant, bar restaurant, or banquet hall” to: “any portion of a rooftop dedicated as a serving area that is an *accessory use* to a *restaurant* or to a commercial use.” The wording was changed to reflect where the commercial rooftop patios are permitted and to avoid confusion with “outdoor serving area” as defined in the Business Licence By-law.

The amendments also propose to revise the parking provisions for a Restaurant, to clarify that the same exemption for at grade patios applies also to rooftop patios.

The following regulations for dealing with Commercial Rooftop Patios are proposed to be added to both By-laws.

“Restaurants, banquet halls, and other commercial uses shall be permitted to include a commercial rooftop patio as an accessory use, provided that the commercial rooftop patio that complies with the following:

- A commercial rooftop patio is prohibited in association with an adult entertainment parlour;
- The design shall be established in accordance with an approved site plan addressing matters such as lighting, landscaping, noise, etc.;
- A commercial rooftop patio must comply with any applicable requirements of municipal by-laws, including the Town’s licensing and noise by-laws, and must comply with all applicable requirements of the Ontario Building Code and Fire Code.”

Staff’s approach to the regulations has been to keep it simple rather than overly prescriptive. It is felt that the abbreviated site plan process (which is outlined below) in combination with the Business Licence By-law will allow for a balance between mitigating potential negative impacts on residential uses and the desirability to activate

the downtown and other commercial areas with appropriate outdoor amenity space for commercial businesses. It is felt that the abbreviated site plan process (which is outlined below) in combination with the Business Licence By-law will allow for a balance between mitigating potential negative impacts on residential uses and the desirability to activate the downtown and other commercial areas with appropriate outdoor amenity space.

Staff are not proposing a noise wall as a zoning requirement as it would then become mandatory for every Commercial Rooftop Patio adjacent to a residential area. If it was a zoning requirement and circumstances arose where a noise wall would not be needed, an applicant would have to apply for a minor variance, thus increasing the time and cost of the application process. Instead, staff are recommending the requirement be placed in the Site Plan Guidelines and the Business Licencing By-law. Having it as a guideline in the Site Plan Application Process Manual and in the Business Licence By-law, it can be determined on a case-by-case basis if a noise wall is needed and required where necessary. Staff and Council have the ability to not approve the site plan and undertaking and/or not grant the business license should an applicant not be able or willing to design and construct a noise wall. This approach allows for flexibility for an application with many variables and many differing circumstances.

If a noise wall is required due to proximity of residential uses, the details and design will need to be submitted with the application. The intention is that anticipated noise impacts will be mitigated early during the process such that a business isn't required to retrofit their patio after complaints are received.

Allowing commercial rooftop patios can assist business expansion, which will assist revenue opportunities. In addition, outdoor patios enable better physical distancing measures to take place and allow businesses to operate in some stages of the pandemic (subject to health measures). Overall, these patios are good for the success of downtown, and other commercial areas, and impacts on residential areas can be mitigated through design and conditions on their business licence.

Modifications to the Site Plan Application Process Manual

Staff is recommending that two sections be added to the Town's [Site Plan Application Process Manual](#) (SPM) which will outline:

1. the modified Site Plan Approval process for Commercial Rooftop Patios and
2. provide the design guidelines.

The first section would outline the new process as follows:

SPM Section 2.3.5 Modified "Quick" Process for Commercial Rooftop Patios

The following separate process is required for Commercial Rooftop Patios:

1. The applicant files a request to have a rooftop patio to Planning Services and concurrently files an application for a business licence through Legislative

Services. The business licence will be the last component required in the application process and will not be approved until the modified site plan approval process is complete.

2. The applicant submits a completed application form, the review fee, site plan drawing and relevant details of any required walls, lighting, landscaping etc. The submission will require details on how noise impacts will be mitigated. This will be reviewed by Staff.
3. Site Plan Review Committee (SPRC) will be notified of the application and it will be subject to the normal bump-up rules of the site plan process.
4. Once Council and staff are satisfied the applicant will be required to enter into an undertaking¹.
5. When the undertaking is executed the business licence can be granted with or without conditions as determined through the site plan process.

This suggested process for reviewing Commercial Rooftop Patios is a hybrid of what is currently done for ground-level outdoor patios in the downtown and our regular site plan process. Staff are proposing a modified “quick” site plan where applications for rooftop patios do not need a pre-consultation meeting. Applicants would have to submit a site plan drawing and a review would be completed by Planning Staff and Site Plan Review Committee, if requested. This review would look at lighting considerations, location on the building, size of the patio, and the potential for negative impacts and how to mitigate them. The applicant would also need to obtain a Building Permit and then obtain a business licence pursuant to the Business Licence By-law.

As proposed, the process keeps the “bump up” process that is typical for site plans, wherein two councillors request to have the application be presented to SPRC. If there is no bump up request it remains delegated to staff.

If the application goes to a SPRC meeting, staff prepare a letter for the Ward Councillor to provide to adjacent residents. This letter advises the residents of the application and the opportunity to listen to or attend the SPRC meeting.

To provide guidance to applicants seeking a Commercial Rooftop Patio, the Site Plan Application Process Manual would be amended to add a new section offering design guidelines as follows:

SPM Section 4.20 Commercial Rooftop Patios

When reviewing a Commercial Rooftop Patio Council and staff shall consider that:

1. Commercial Rooftop Patios are not permitted within 40 metres of the property line of an adjacent residential property unless the Commercial Rooftop Patio is

¹ This is an agreement with the force and effect of a Site Plan Agreement under Section 41 of the Planning Act that commits the owner of the property to complete the works according to the approved plans.

separated from the adjacent residential property by a solid translucent or opaque barrier of a minimum of six feet in height for the purpose of noise reduction.

2. All lighting must be dark sky compliant. A Commercial Rooftop Patio shall be arranged and designed such that the lighting fixtures deflect the light down and away from adjacent residential units, buildings, lots and streets.
3. Roof coverage for a Commercial Rooftop Patio shall generally not exceed 20% of the rooftop area, as to ensure another storey is not effectively added to the building and as to not overpower the rhythm of street and rooflines (especially in downtown). For the purposes of these guidelines umbrellas are not considered roof coverage.
4. Planter boxes and/or other landscape features (i.e. a living wall) shall be considered to reduce urban heat island effects, to create a pleasing environment, and to be visually attractive.
5. Design of the Commercial Rooftop Patio and the materials of any sound mitigating wall shall be sympathetic to the architectural style of the building and surrounding area.

Proposed Amendments to Business Licence By-law 2020-31

Outdoor Serving Areas (ground-level, liquor licensed outdoor patios)

With the introduction of a proposed licensing regime for Commercial Rooftop Patios, Town staff are also recommending merging the stand-alone by-law for ground-level outdoor patios (Outdoor Serving Area By-law 2016-29) into the recently adopted Business Licence By-law as part of clerical and housekeeping changes. It is relevant to note that there are no regulatory changes proposed in this portion of amendments. However, minor clerical changes are being proposed as follows:

- definitions have been updated;
- existing provisions have been reworded using plain language for a clear and concise understanding of all regulations imposed; and
- the hours of operation provision has been reworded to be in accordance with AGCO restrictions.

The Town currently authorizes ground-level outdoor patios on private property to operate from 11:00am until 1:00am. This permission was based on the AGCO's hours of operation for liquor licensed premises. However, effective January 1, 2019, the AGCO permanently amended their hours of operation to permit liquor licensed establishments to operate from 9:00am until 2:00am. By amending the wording within the Town's by-law to specify hours of operation be in accordance with AGCO restrictions, ground-level outdoor patios will now be permitted to operate from 9:00am until 2:00am. Should

Council wish to further restrict these hours, they are empowered to do so and direction should be provided to staff.

Commercial Rooftop Patios

As part of the proposed licensing framework for Commercial Rooftop Patios, Town staff are recommending the adoption of the following provisions:

- Prior to the issuance of a business licence, proper approvals must be obtained through the Town's site plan process;
- Every patio shall comply with AGCO, Fire, Building, and Planning requirements;
- Every patio shall have a 6ft opaque wall for noise reduction purposes when within 40m from an adjacent residential property;
- Every patio shall incorporate dark sky compliant lighting and consider design and install to mitigate light pollution to neighbouring properties; and
- Hours of operation shall be from 9:00am until 11:00pm.
- Hours of operation shall be from 9:00am until 11:00pm; and

It is also relevant to note that an exemption process has been provided within the by-law to allow for live music or extended hours of operation on a case-by-case basis. This would enable a patio owner to apply for a noise exemption permit for any scheduled live performances or events that they may wish to occur. A noise exemption permit process will request feedback from the Mayor, Deputy Mayor, and Ward Councillor, and also establishes requirements for neighbouring properties to be notified prior to approval being granted by the Town.

Conclusion

The amendments outlined in this report propose to permit commercial rooftop patios as accessory to restaurants and commercial uses and confirms other applicable design and operational standards as well as the applicability of other by-law to mitigate potential impacts.

Business Plan and Strategic Plan Linkages

- Economic Leadership and Job Creation
- Vibrancy on Yonge, Davis and Mulock

Consultation

The statutory Public Meeting was held December 14, 2020. No members of the public addressed Council at the meeting. Staff have not received any concerns or questions from the public. Correspondence in support of Commercial Rooftop Patios were received after the Public Meeting.

Staff from Planning Services and Regulatory Services have been working together to ensure both By-law regimes are working in concert. Other departments were consulted as needed.

Human Resource Considerations

None.

Budget Impact

Staff are recommending a new Site Plan application fee specific to Commercial Rooftop Patios of \$550.00 to recover staff time reviewing and processing the application.

If the licensing framework is adopted a proposed, Commercial Rooftop Patios will also require an annual business licence. Town staff are proposing an annual fee of \$374 per year, which aligns with the existing licensing fee for ground-level patios.

This report also recommends waiving the Site Plan application and Business Licence fees for 2021 as support to local businesses during COVID. This would be funded from the COVID Contingency Reserve.

Attachments

Attachment A - Draft Amendments to the Business License By-law 2020-31

Attachment B - Draft Amendments to the AMPS By-law 2019-62

Attachment C - Draft Amendments to the Fees and Charges By-law 2019-52

Submitted by

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