

**Report to
Rapport au:**

**Transportation Committee
Comité des transports
3 March 2021 / 3 mars 2021**

**and Council
et au Conseil
10 March 2021 / 10 mars 2021**

**Submitted on February 16, 2021
Soumis le 16 février 2021**

Submitted by

Soumis par:

Court Curry,

Manager / Gestionnaire,

**Right of Way, Heritage and Urban Design Services / Services des emprises, du
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Development Department / Direction générale de la planification, de
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Contact Person

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Ward: CITY WIDE / À L'ÉCHELLE DE LA VILLE File Number: ACS2021-PIE-RHU-0005

SUBJECT: Patio Innovation Program 2021

OBJET: Édition 2021 du Programme d'innovation lié aux terrasses

REPORT RECOMMENDATIONS

That the Transportation Committee recommend that Council:

1. Delegate authority to the Manager, Right of Way, Heritage and Urban Design in consultation with the Director of Traffic Services together with the Director of Roads and Parking Services, to:
 - a. Authorize the closure of segments of any City of Ottawa road as a temporary measure through to January 1, 2022, as part of the City of Ottawa's economic recovery efforts; and
 - b. Limit this delegation of authority to only be exercised where there is the written request of the Business Improvement Area (BIA) for the given geographic area, or in the circumstance where a BIA does not exist, 2/3 of the business owners on each block segment approve of the road closure as provided in writing to the Manager and the Directors listed above;
2. Amend the Right of Way Patio By-law 2017-92 (ROW Patio By-law) for 2021 only, as follows so that:
 - a. All Right Of Way patio permits (ROW patio permit) issued in 2021, be subject to a closure of 2:00 AM; and
 - b. An applicant to the Café seating program may request an unlimited amount of Café seating permits (to expand beyond the four table, eight seat cap) where space exists.
3. Amend the provisions of the Use and Care of Roads By-law, for 2021 only, such that a business owner may establish along the frontage of their business a retail pop up, with an application fee of \$68 similar to the Café Seating provisions of the ROW Patio By-law 2017-92 and \$372 for a retail patio.

RECOMMANDATIONS DU RAPPORT

Que le Comité des transports recommande ce qui suit au Conseil :

1. Déléguer au gestionnaire des Services des emprises, du patrimoine et du design urbain, en consultation avec le directeur des Services de la circulation et le directeur des Services des routes et du stationnement, les pouvoirs suivants :

- a. **Autoriser la fermeture temporaire de tronçons de n'importe quelle rue d'Ottawa jusqu'au 1^{er} janvier 2022, dans le cadre des efforts de relance économique de la Ville d'Ottawa; et**
 - b. **Que ce pouvoir délégué ne soit exercé qu'avec le consentement écrit de la zone d'amélioration commerciale (ZAC) du secteur géographique visé ou, s'il n'y a pas de ZAC, à la condition que les deux tiers des propriétaires d'entreprises de chaque tronçon donnent leur approbation écrite de la fermeture de rue au gestionnaire et aux directeurs susmentionnés;**
2. **Modifier le Règlement régissant les terrasses sur emprise 2017-92, pour l'année 2021 uniquement, de la manière suivante :**
 - a. **Les détenteurs de permis de terrasse sur emprise délivrés en 2021 devront fermer leur établissement à 2 h; et**
 - b. **Le requérant souhaitant participer au programme de petites terrasses de café pourra demander un nombre illimité de places sur sa terrasse (afin d'avoir plus de quatre tables et huit chaises) si l'espace est suffisant.**
3. **Modifier les dispositions du Règlement sur l'utilisation et l'entretien des routes, pour l'année 2021 uniquement, afin que les commerçants puissent aménager des espaces temporaires de vente au détail le long de la façade de leur établissement, moyennant des droits de demande de 68 \$, comme pour les petites terrasses de café dans le Règlement régissant les terrasses sur emprise 2017-92, ou des terrasses de vente au détail, moyennant des droits de demande de 372 \$.**

BACKGROUND

In March 2020, the COVID-19 pandemic and declaration of a State of Emergency in Ontario resulted in the mandatory closure of all non-essential workplaces and businesses. These closures had an immediate and detrimental impact on Ottawa's economy including a sharp decline in business revenues, employment and economic activity. In response, the City undertook several actions to help inform and guide Ottawa's economic response and recovery efforts. The Mayor's Economic Partners Task Force, led by Mayor Watson and co-chaired by Councillors Dudas and El-Chantiry, was established at the outset of the pandemic to identify emerging issues and opportunities to support the local business community.

In addition to the Mayor's Economic Partners Task Force, the Economic Recovery Task Team, consisting of staff from various City service areas, was initiated to coordinate a strategy and undertake a series of measures in support of the city's economic recovery. The strategy, based on data and research, provides clear objectives aimed at mitigating the impacts of the pandemic by delivering a series of City process improvements, tools, and programs.

As part of the City's COVID-19 economic recovery plan, City staff developed innovative and supportive solutions to keep Ottawa businesses and neighbourhoods vibrant through 2020. In addition, the Province of Ontario, through the Alcohol and Gaming Commission of Ontario (AGCO), released a suite of exemptions related to the licensing of establishments to support businesses and facilitate a streamlined approach for outdoor patio expansions and for the first time, permitted the serving of alcohol for café seating (bistro-style seating). The Province has extended these exemptions for the full calendar year of 2021.

DISCUSSION

Over the course of 2020, a successful Patio Innovation Program was developed which included a series of measures to encourage new restaurant patios and café seating, as well as retail vending in the right of way, by reducing or waiving fees and accelerating approvals. The initiatives in 2020 were designed to be as nimble as possible, aligning to the fluctuating restrictions as a result of COVID-19.

With City Council's support and approval, the following are the several initiatives under the umbrella of the Patio Innovation Program which were implemented in 2020:

- Waiving the monthly rate for right of way (ROW) patios and café seating permits, (which has been continued for 2021 through Council's approval of the 2021 budget);
- Eliminating the cap on the quantity of café seating tables permitted per business;
- Streamlining the circulation process for new ROW patio permit applications;
- Waiving the monthly permit fees for the ROW Winter Patio program (beginning November 15, 2020);
- Developing a new retail vending program to allow retailers to vend on their business frontages

- Partnering with Building Code Services to develop a streamlined system to review inquiries and building permit applications for tents and awnings related to patios;
- Partnering with Traffic Services to undertake the closure of several city streets as pilot projects to facilitate patio expansions;
- Amending the Zoning By-law temporarily for patios on private property to waive the 30-metre setback requirement from residential zones along with other provisions and introduce a registration and property owner notification system. (which has been extended by Council until January 1, 2022)

As noted above, the waiving of monthly fees for 2021 for ROW patio permits and the implementation of a Temporary Zoning By-law amendment for patios on private property was completed in 2020. On November 25, Council extended the temporary zoning to January 1, 2022.

Staff are recommending that the remainder of the above noted initiatives be extended for the 2021 ROW patio season as set out below. There are no anticipated financial implications associated with these recommendations, save and except the potential for some minor revenue from the continuation of the retail vending program, which was introduced for the first time in 2020.

Road Closures

One of the successful pilots that were undertaken in 2020 was the variety of road closures to support the expansion of outdoor dining. Several street closures were undertaken as pilot projects to facilitate patio expansions:

- Somerset Street West from Bank to O'Connor; Fridays to Sundays
- Flora Street; Fridays to Sundays
- Frank Street at Bank Street for approximately 15 metres
- Clarence Street from Dalhousie Street to William Street
- ByWard Market Square from York Street to Clarence Street
- York Street from ByWard Market Square to Sussex Drive

In addition, William Street from George Street to York Street was closed for the season to facilitate physical distancing as part of a continuing public realm pilot project from 2019. Bank Street from Queen Street to Catherine Street was closed every Saturday for

the month of July to facilitate physical distancing. This pilot, led by the Bank Street Business Improvement Area (BIA), proved to be so successful that the BIA extended the Saturday closures until the end of September.

Council provided staff the delegated authority for road closures until April 1, 2021 and staff are recommending that the delegated authority to approve road closure requests be extended for the remainder of 2021.

Closing Times for ROW Patios

At the time of implementing several of the above noted 2020 initiatives, the subject of closing times for ROW patios was raised at Transportation Committee and Council.

In 2017, a new ROW Patio By-law was passed, which requires an 11:00 PM closing time for those new ROW patios within 30 metres of a residential or mixed residential/commercial zone. This requirement in the by-law has resulted in an inconsistencies with closing times for new patios that are required to close at 11:00 PM , where historical permit holders (within the same area) are allowed to continue operating under the pre-2017 by-law restrictions (2:00 AM closing times), while other areas, such as Elgin Street, have been permitted to close at 2:00 AM.

It is also noted that closing times for patios on private property cannot be regulated through zoning and thus, for those businesses with patios on private property, even in the same area as ROW patio permit holders, the closing time is regulated through their liquor license (up to 2:00 AM).

At the July 15, 2020 Council meeting, Council approved a motion to permit all ROW patios within the boundary of the ByWard Market to close at 1:00 am to help regularize the closing times for the area where the majority of the ROW patio permits are issued. Council directed staff to report back regarding noise complaints in August 2020 as well as to provide a recommendation proposal for the Fall regarding hours of operation for patios in the ByWard Market. Council directed staff that a minimum one-week consultation period be undertaken with businesses on the matter of any revision to the by-law for 2021.

In August, staff reported back to Council and detailed the limited noise complaints and compliance issues for ROW patios within the ByWard Market and recommended the continuation of the 1:00 AM closing time for the remainder of the 2020 season. At the August meeting, staff advised Council that the matter of hours of operation of right of way patios would be reviewed for the 2021 patio season.

One of the concerns that has been raised in the past with respect to closing times has been noise. All patios, regardless of their location (ROW or private property), are

subject to the City's Noise By-law, which is the most effective and consistent tool for the regulation of noise. By-law Services has provided staff with a detailed log of noise complaints related to outdoor patios for 2020. Based on the data compiled, cross referenced with the 125 ROW patios and café seating permits and the 60 registered patios on private property, there were 17 noise complaints in total related to noise for outdoor patios. Of the 17 noise complaints for outdoor patios, six of the establishments have ROW patio permits, one registered with the City for the private patio program and the remainder are established patios on private property (from previous years).

Another concern raised related to closing times has been the inconsistent and uneven local economic situation created between businesses and their own operating logistics between varying closing times between indoor and outdoor dining for the same establishment. As per Council's direction to staff at the July 2020 Council meeting, staff consulted with businesses regarding closing times. Staff surveyed the ROW permit holders for this year to inquire about the 2020 patio season and specifically review the topic of closing times. Overwhelmingly the response has been that businesses would prefer that their ROW permits allow for a closing time that is consistent with their indoor dining closing time of their establishment. The majority of permit holders indicated that their indoor dining closing time is 2:00 AM.

Permit holders have also noted the difficulties regarding the logistics of different indoor and outdoor dining closing times for the same establishment. This difference in closing times coupled with the many fluctuating restrictions due to COVID-19 compounded these challenges and negatively impacted businesses especially during the restricted times when indoor dining was closed. During the periods where indoor dining was closed, these establishments could only operate outdoor dining and were subject to the earlier closing time as required by their ROW permit despite their later indoor dining operating hours.

Based on the information above and recognizing that future local economic resilience is an important consideration over the next six to 12 months and beyond, and that the restrictions related to COVID-19 and indoor and outdoor dining are constantly evolving, staff recommend that the closing times for all ROW patio and café seating permit holders be extended to 2:00 AM for the 2021 season as a pilot. This extended closing time will provide staff with the opportunity to continue to work closely with our colleagues in By-law Services, BIAs and local businesses to determine a recommended approach for the future, but most importantly provide local businesses with certainty for the 2021 patio season.

Café Seating

The recommendation to remove the capacity restriction for café seating is a continuation from one of the patio initiatives undertaken in 2020. The AGCO exemptions includes permitting alcohol to be sold at café seating as long as permits are obtained from the municipality. As a result of the AGCO exemptions and the periodic restrictions on indoor dining, the City had its largest café seating program ever in 2020 and anticipates that 2021 will be just as successful.

Patios on Private Property

As noted previously in this report, a Temporary Zoning By-law amendment was extended to January 1, 2022, which relaxes the zoning provisions of Section 65, Outdoor Patios in the City Zoning By-law to allow greater flexibility for businesses to establish new or expand existing patios on private property. Closing times for patios on private property cannot be regulated through zoning, any issues related to noise are addressed through the enforcement of the City's Noise By-law.

Enforcement Process for ROW patios

The ROW Patio By-law provides staff the authority to include conditions on ROW patio permits and, if necessary, revoke the permit. These conditions can include such topics as closing times for patios, adherence to all other municipal by-laws and special conditions specific to a location. Throughout the patio season, staff are in regular contact with By-law to ensure complaints regarding ROW patios are addressed. Staff have developed a stepped enforcement strategy where, for the first offence a warning is issued coupled with education on the ROW patio program, the second offence will result in changes to the ROW patio permit to require the patio to close at 11:00 PM and the third offence will result in revocation of the ROW patio permit.

It should be noted that Provincial restrictions supersede any ROW patio conditions such that, if the Province restricts closing times for outdoor dining which are earlier than what is permitted in the ROW Patio By-law (or subsequent permit), the Provincial restrictions apply.

RURAL IMPLICATIONS

There are no rural implications associated with this report.

CONSULTATION

Staff undertook targeted consultation with business owners with respect to the above noted recommendations. A survey of existing ROW patio and café seating permit holders was conducted regarding closing times and the 2020 outdoor dining season.

In addition, due to the concentration of ROW patio permit holders and the pilot road closures undertaken in the ByWard Market, staff met with the Lowertown Community Association in the ByWard Market to obtain feedback on the various initiatives that were undertaken in the ByWard Market. As a result of this consultation, staff have developed an internal process to receive, review and undertake road closures and have designated staff to oversee the various initiatives in the ByWard Market so that a more coordinated approach can be achieved in 2021.

COMMENTS BY THE WARD COUNCILLORS

Not applicable – This is a City-wide report.

LEGAL IMPLICATIONS

There are no legal impediments to approving the recommendations as outlined in this report.

RISK MANAGEMENT IMPLICATIONS

There is a risk of increased noise after 11 PM as a result of this change. However, as mentioned above, all patios will still be subject to the existing Noise By-law (2017-255) and the Patio By-law 2017-92. Businesses that receive complaints shall be subject to the enforcement provisions within these two by-laws and may have conditions imposed on their patio permits (ex: patio must close at an earlier time and, if necessary, have their patio permit rescinded).

ASSET MANAGEMENT IMPLICATIONS

There are no asset management implications associated with the recommendations of this report.

FINANCIAL IMPLICATIONS

There are no anticipated financial implications associated with these recommendations, except the potential for minor revenues from the continuation of the retail vending program, which was introduced for the first time in 2020.

ACCESSIBILITY IMPACTS

The ROW Patio By-law states that all patios are conditional upon the General Manager's approval of its dimensions and proposed location within the highway and such an approval shall be subject to the following considerations:

- Applicants must ensure a minimum pedestrian clearway of 2 metres at all times

- Compliance with the requirements of the City of Ottawa's Accessibility Design Standards

As part of the permit application process, operators must demonstrate that their patios are accessible. Accessibility is verified by City staff at the application stage. Additionally, when new or expanded patios are considered, every effort is made to maintain a straight pedestrian clearway (footpath).

ENVIRONMENTAL IMPLICATIONS

There are no environmental implications.

TERM OF COUNCIL PRIORITIES

The City's economic recovery efforts align with the Economic Growth and Diversification and Thriving Communities priorities of the 2019-2022 City of Ottawa Strategic Plan.

DISPOSITION

Following Council approval of this report, staff within the Right of Way Branch shall amend the ROW Patio By-law (2017-92) for 2021 only.