



Item
Meeting2020 June 22

COUNCIL REPORT

TO: CITY MANAGER **DATE:** 2020 June 17

FROM: DIRECTOR PLANNING AND BUILDING **FILE:** 42000 20
Reference: Bylaw Text Amdmt

SUBJECT: PROPOSED ZONING BYLAW AND PLANNING AND BUILDING FEES BYLAW AMENDMENTS – IMMEDIATE PANDEMIC REOPENING MEASURES

PURPOSE: To propose amendments to the Burnaby Zoning Bylaw and Planning and Building Fees Bylaw to implement COVID-19 pandemic reopening measures.

RECOMMENDATIONS:

1. **THAT** Council authorize the preparation of a bylaw amending the Burnaby Zoning Bylaw to implement temporary amendments to off-street parking requirements, as outlined in Section 3.1 of this report, and further authorize bringing forward the amendments for three readings and final adoption without a public hearing;
2. **THAT** Council authorize the preparation of a bylaw amending the Zoning Bylaw to implement certain temporary amendments to support pandemic reopening measures, as outlined in Section 3.2 of this report, and further authorize the waiver of a public hearing for such Zoning Bylaw amendments;
3. **THAT** Council authorize the preparation of a bylaw amending the Burnaby Planning and Building Fees Bylaw to waive the application fee for Preliminary Plan Approval applications for temporary outdoor seating for food and beverage establishments and temporary outdoor display and retail sale accessory to commercial and industrial establishments, as outlined in Section 3.3 of this report.

REPORT

1.0 BACKGROUND INFORMATION

Under the Province’s Restart Plan dealing with COVID-19 pandemic recovery, cafes, restaurants, and pubs are currently permitted to offer dine-in services subject to a number of restrictions. The 2020 June 10 provincial health order requires these establishments to determine the maximum number of patrons and staff that can be accommodated if they are standing or sitting 2.0 m (6.56 ft.) apart. This order replaces the previous more restrictive order that limited establishments to a 50% reduction in patron capacity at any time. Although the new order is less restrictive, it still may impose upon businesses by reducing their seating capacity.

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On 2020 May 22, the Liquor and Cannabis Regulation Branch (LCRB) announced a new Policy Directive to issue a Temporary Expanded Service Area Authorization to food primary, liquor primary, and manufacturing licences. This new authorization permits a licensee to temporarily expand their service areas provided that the approved patron capacity of the establishment remains unchanged. This extension, which will be valid until 2020 October 31, reduces the density of patrons in the establishments, in line with the Provincial Health Officer (PHO) orders and guidelines regarding physical distancing. The licensee is required to comply with all local government Bylaws, including the Zoning Bylaw, and health and fire regulations.

In general, Council's approval is required for the addition of a new patio, or an increase to establishments' patron capacity in a liquor primary or liquor primary club establishment, and a liquor manufacturer lounge endorsement. Considering that patron capacity should remain unchanged as part of the Temporary Expanded Service Area Authorization, the LCRB has given local governments two options for the approval of temporary expansion authorizations for liquor primary and liquor manufacturer licences. These include pre-approval of all applications (opting out of review and approval of all applications), or review and approval of each individual application. It should be noted that Council's approval is not required for the expansion of outdoor patios for food primary licences.

In addition to food and beverage establishments, retail stores and other businesses can benefit from having outdoor space for displays and retail sale which are accessory to such commercial and industrial establishments.

To support business recovery from the current pandemic, the City of Burnaby is taking the following steps:

- implementing temporary lane closures on City streets at select locations thorough the City, should the need for physical distancing and/or enhanced active mobility increase, to help the community physically distance. This was authorized by Council on 2020 June 01.
- allowing the commercial use of road rights-of-way, where possible, through the Encroachment Permit process to provide a greater operating space for businesses to accommodate more customers while complying with the ongoing distancing guidelines and restrictions on public gatherings. This was authorized by Council on 2020 June 01.
- allowing a blanket pre-approval by Council for the expansion of service areas for liquor primary and liquor manufacturer licences, provided that the establishment's patron capacity remains unchanged. This was granted by Council on 2020 June 01.
- proposing a number of Zoning Bylaw amendments to facilitate the temporary expansion of outdoor seating areas for cafes, restaurants, and similar food and beverage establishments without increasing patron capacity, as well as authorize temporary outdoor displays and retail sale accessory to commercial and industrial establishments. The proposed amendments are discussed in Sections 3.1 and 3.2 of this report, below.

- proposing an amendment to the Burnaby Planning and Building Fees Bylaw to waive the application fees for Preliminary Plan Approval (PPA) applications for temporary outdoor seating areas at cafes, restaurants, and similar food and beverage establishments which do not increase permitted patron capacity, and temporary outdoor displays and retail sale accessory to commercial and industrial establishments. The proposed amendment is discussed in Section 3.3 of this report.

2.0 POLICY

The advancement of the proposed Zoning Bylaw and Planning and Building Fees Bylaw amendments aligns with the following goals and sub-goals of the Corporate Strategic Plan:

- **A Connected Community**
 - Social connection – Enhance social connections throughout Burnaby.
 - Partnership – Work collaboratively with businesses, educational institutions, associations, other communities and governments.
- **A Healthy Community**
 - Healthy Environment – Enhance our environmental health, resilience and sustainability.
- **A Dynamic Community**
 - Economic opportunity – Foster an environment that attracts new and supports existing jobs, businesses and industries.

3.0 PROPOSED BYLAW AMENDMENTS

Issue

There is a need to review and amend the Zoning Bylaw to provide more options for on-site expansion of outdoor seating areas for cafes, restaurants, and similar food and beverage establishments, as well as outdoor displays and retail sale accessory to commercial and industrial establishments, to support business reopening in line with the PHO orders and guidelines regarding physical distancing.

Discussion

The area of a property not occupied by buildings or structures provides considerable potential for the outdoor expansion of seating areas, display and retail sale accessory to commercial and industrial establishments, particularly those in hospitality sectors. Review of the Zoning Bylaw to identify and re-purpose these potential areas, including required yards, landscape areas, off-street parking spaces, and roof-top decks for outdoor expansion of seating areas, display areas and retail sale within the premises, is an important step in supporting businesses in their reopening during the COVID-19 pandemic.

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This report recommends a number of Zoning Bylaw amendments to facilitate, within the business premises, temporary outdoor seating areas at cafes, restaurants, and similar food and beverage establishments, as well as temporary outdoor display areas and retail sale accessory to commercial and industrial establishments. The proposed amendments include temporary changes to the Zoning Bylaw as immediate pandemic reopening measures. To support businesses in their re-opening efforts, it is recommended that Council approve:

- expediting the adoption of the proposed Zoning Bylaw amendments to the extent possible; and,
- amending the Planning and Building Fees Bylaw to waive the fee for PPA applications for temporary outdoor seating areas for cafes, restaurants, and similar food and beverage establishments which do not increase permitted patron capacity, as well as temporary outdoor displays and retail sale accessory to commercial and industrial establishments.

The proposed bylaw amendments are as follows:

3.1 Temporary Zoning Bylaw Amendments Related to Off-Street Parking

The following temporary amendments to off-street parking provisions in the Zoning Bylaw are recommended as immediate pandemic reopening measures to support businesses particularly in hospitality sectors, as well as other commercial and industrial establishments:

To allow the expansion of outdoor seating areas at cafes, restaurants, and similar food and beverage establishments to help businesses meet the social distancing restrictions while maintaining their patron capacity, a discretionary reduction of off-street parking on a temporary basis is recommended subject to a number of conditions. The discretionary reduction of off-street parking on a temporary basis is also applicable to commercial and industrial establishments where a temporary outdoor expansion of accessory display area and retail sale is proposed. The required criteria for the discretionary reduction of off-street parking are as follows:

- the area of the reduced off-street parking is exclusively used for the purpose of accommodating outdoor seating area, or accessory outdoor display area and retail sale for commercial or industrial establishments;
- the outdoor seating area is located adjacent to the establishment which it serves. The location of a pedestrian walkway between the outdoor seating area and the building is also permitted;
- the City Engineer is satisfied that the location of outdoor seating area or the accessory outdoor display and retail sale area does not adversely interfere with pedestrian and vehicular movement, fire truck and fire hydrant access, and solid waste collection within and adjacent to the premises;
- the outdoor seating area or the accessory outdoor display area and retail sale does not occupy or reduce any accessible parking space on the premises; and,

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- the outdoor seating area is only used to physically expand the service area of the establishment, and does not increase permitted patron capacity.

The provision of off-street parking for outdoor seating area for café, restaurants and similar food and beverage establishments, as well as outdoor display area and retail sale accessory to commercial and industrial establishments may preclude the outdoor expansion of service areas in some establishments due to lack of additional parking. As such, it is recommended that these outdoor seating areas and accessory outdoor display and retail sale areas be temporarily exempted from the calculation of floor area for the purpose of off-street parking calculations. Further, the restriction that required off-street parking spaces should only serve as parking for the intended use, is proposed to be suspended with regard to off-site parking spaces approved for use as outdoor seating areas, and accessory outdoor display and retail sale areas.

The above temporary measures are proposed to be added as a new section 800.4.2 in the Zoning Bylaw, and be valid until 2021 October 31, or another date determined by the Director of Planning and Building in response to the COVID-19 pandemic.

Recommended Zoning Bylaw Amendments Related to Off-Street Parking

Below is the recommended wording for the off-street parking amendments discussed above. Although contained within the City’s Zoning Bylaw, off-street parking requirements are not “zoning” provisions which require a public hearing under the *Local Government Act*. The City’s historic practice is to forward all Zoning Bylaw amendments to a public hearing. In order to expedite the approval of applications for temporary outdoor seating areas and accessory outdoor display and retail sale areas within off-street parking spaces, staff have brought forward these amendments concurrently with this report and propose that Council give three readings to this bylaw without forwarding it to a public hearing, with final adoption to follow. The bylaw to implement these off-street parking amendments appear elsewhere on the Council agenda. Once adopted, staff will be able to process and approve applications for outdoor seating areas and accessory outdoor display and retail sale areas in off-street parking spaces immediately.

1. **THAT** Section 800.4.2 be added to the Zoning Bylaw with wording the same or similar to the following:

800.4.2 Temporary Off-Street Parking Reductions During COVID-19 Pandemic:

Notwithstanding any other provision of this bylaw, until 2021 October 31 or another date determined by the Director of Planning and Building in response to the COVID-19 pandemic:

- (1) *The required off-street parking spaces for cafes, restaurants, drive-in restaurants, and similar establishments for the sale and consumption of food and/or beverage on the premises, and commercial or industrial*

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establishments, may be reduced with the written approval of the Director of Planning and Building, subject to the following conditions:

- (a) the area of the reduced off-street parking is exclusively used for the purpose of accommodating outdoor seating area for the café, restaurant, drive-in restaurant, or similar establishments for the sale and consumption of food and/or beverage on the premises, or outdoor display and retail sale accessory to the commercial and industrial establishment on the premises;*
 - (b) such outdoor seating area is located adjacent to the associated establishment or separated from such establishment by a pedestrian walkway;*
 - (c) such outdoor seating area is only used to physically expand the service area of the establishment and does not increase permitted patron capacity for the establishment;*
 - (d) the City Engineer is satisfied that the location of such outdoor seating area or accessory outdoor display and retail sale does not interfere with pedestrian and vehicular movement, fire truck and fire hydrant access, and solid waste collection within and adjacent to the premises;*
 - (e) such outdoor seating area or accessory outdoor display and retail sale does not occupy or reduce any accessible parking space on the premises.*
- (2) The outdoor seating area and accessory outdoor display and retail sale area approved by the Director of Planning and Building in accordance with section 800.4.2(1), or as otherwise permitted in this bylaw, shall be excluded from the calculation of floor area for the purpose of off-street parking calculations for the associated establishments, in accordance with this Schedule.*
- (3) The restriction in section 800.5(1) of this bylaw does not apply to any off-street parking spaces approved by the Director of Planning and Building in accordance with section 800.4.2(1) of this bylaw.*

3.2 Other Temporary Zoning Bylaw Amendments

In addition to amending off-street parking requirements, the following temporary amendments are proposed for other provisions in the Zoning Bylaw as additional measures to support commercial

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and industrial establishments, including hospitality services, wishing to use outdoor spaces on their premises for outdoor seating, or accessory outdoor display and retail sale:

- exempt outdoor seating areas at cafes, restaurants and similar food and beverage establishments, as well as outdoor display and retail sale accessory to commercial and industrial establishments from lot coverage:

According to the Zoning Bylaw, “lot coverage” is a combined area covered by all buildings and structures on the lot, excluding a number of building features, such as bay windows, terraces and balconies. Canopies and sunshades are also excluded from lot coverage. As such, outdoor seating areas at cafes, restaurants, and similar food and beverage establishments using canopies and sunshades are not included in lot coverage. However, any permanent roof structure or enclosure to protect the seating area from rain, wind, sun and other environmental elements are included in lot coverage.

Considering that the social distancing restrictions may continue for an extended period, it would support reopening efforts by excluding covered outdoor seating at cafes, restaurants, and other food and beverage establishments, as well as covered outdoor display and retail sale accessory to commercial and industrial establishments, where it is desirable, from the calculation of lot coverage. Typically, the maximum lot coverage in the commercial districts where building bulk is regulated by lot coverage is 50%. Similarly in the industrial/manufacturing districts, the figure is 60%. It is proposed that a temporary provision be added to the Zoning Bylaw to exclude covered outdoor seating area at cafes, restaurants, and similar food and beverage establishments, as well as covered outdoor display and retail sale accessory to commercial and industrial establishments, from the calculation of lot coverage. The proposed exemption should be provided subject to the approval of the Director of Planning and Building, until 2021 October 31, or as determined by the Director of Planning and Building in respect to the COVID-19 pandemic. In addition, the covered outdoor seating may be exempted from the calculation of lot coverage, provided that the approved patron capacity remains the same. It is anticipated that this exemption will not negatively impact bulk of buildings, although this will be monitored through the PPA process and Director of Planning and Building approvals.

- allow the projection of outdoor seating at cafes, restaurants, and similar food and beverage establishments, as well as outdoor displays and retail sale accessory to commercial and industrial establishments, into required yards:

The Zoning Bylaw does not allow the location of principal buildings in any required front, side or rear yard, as well as accessory buildings and non-building structures in any required front or side yards, with a number of exceptions. Section 6.12 of the Zoning Bylaw provides a list of projections into required yards, including canopies and sunshades. While a temporary outdoor seating area, or accessory outdoor display and retail sale with canopies and sunshades may be permitted in required yards, the location of such structures while covered or enclosed are restricted in any required yards.

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Considering that social distancing restrictions may be in place for an extended period, it is recommended that the construction of covered or enclosed outdoor seating, and accessory outdoor display and retail sale in required yards be permitted on a temporary basis. As such, a temporary provision is proposed to be added to the Zoning Bylaw to allow such projections into required yards subject to approval of the Director of Planning and Building until 2021 October 31, or as determined by the Director of Planning and Building in respect to the COVID-19 pandemic. Through the review process, staff will work with applicants proposing to locate outdoor seating, and accessory outdoor display and retail sale that are covered and enclosed in required yards, to ensure the design of such structures, including structure height and materials, will not impact adjacent streetscapes and neighbouring properties. Further, such outdoor seating must not increase the permitted patron capacity for the establishment.

- allow outdoor seating at cafes, restaurants, and similar food and beverage establishments, as well as outdoor display and retail sale accessory to commercial and industrial establishments to be located outside of a completely enclosed building:

Currently, the Zoning Bylaw requires that all permitted uses in the C Commercial and M Industrial Districts, excluding the M3 District, be located within a completely enclosed building, with a number of exemptions including outdoor seating at restaurants in C Districts. A “completely enclosed building” is defined as a building separated on all sides from the adjacent open spaces, or from other buildings or structures, by a permanent roof and by exterior walls or party walls, pierced only by windows and normal entrance or exit doors.

To support businesses reopening in line with the PHO orders and guidelines regarding physical distancing, it is recommended that in general, outdoor seating as well as outdoor displays and retail sale accessory to commercial and industrial establishments be permitted outside of a completely enclosed building on a temporary basis. As such, a provision is proposed to be added to the Zoning Bylaw to temporarily allow such uses to be located outside of a completely enclosed building, subject to approval of the Director of Planning and Building until 2021 October 31, or as determined by the Director of Planning and Building in response to the COVID-19 pandemic.

Recommended Zoning Bylaw Amendments

Below is the proposed wording for the temporary Zoning Bylaw amendments described above. Unlike the off-street parking bylaw amendments, these Zoning Bylaw amendments relate to “zoning” matters and typically would entail a public hearing after first reading. In this case, the *Local Government Act* allows for the public hearing to be waived since the amendments are consistent with the City’s Official Community Plan, provided notices of the amendments and waiver of public hearing are published for two consecutive weeks in a local newspaper prior to third reading of the bylaw. In order to expedite the amendment process, staff are seeking Council authorization to waive the public hearing for the amendments proposed in section 3.2 of this report, above. Staff have brought forward the amendment bylaw concurrently with this report and propose that Council give first and second readings at this Council meeting. Notices of the amendments and waiver of public hearing will then be published in the 2020 June 25 and July 02 editions of the Burnaby Now, following which the amendments can be brought forward for 3rd reading and

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final adoption at the 2020 July 06 Council meeting. In the meantime, staff can receive and review applications involving outdoor seating, and accessory outdoor display and retail sale that are covered and enclosed, and result in excess lot coverage and/or projections into yards, and approve these applications after adoption of the proposed bylaw amendments.

2. **THAT** Section 6.26 be added to the Zoning Bylaw with wording the same or similar to the following:

6.26 Temporary Exceptions for Outdoor Seating and Outdoor Accessory Display and Retail Sale During COVID-19 Pandemic

Notwithstanding any other provision of this bylaw, until 2021 October 31 or another date determined by the Director of Planning and Building in response to the COVID-19 pandemic:

(1) Temporary covered and/or enclosed outdoor seating areas at cafés, restaurants, drive-in restaurants, and similar establishments for the sale and consumption of food and/or beverage on the premises, and temporary covered and/or enclosed outdoor display and retail sale accessory to commercial and industrial establishments may project into any required yards, are excluded from the calculation of lot coverage, and may be located outside of a completely enclosed building, provided that:

(a) such outdoor seating area or accessory outdoor display and retail sale is approved in writing by the Director of Planning and Building; and,

(b) such outdoor seating area is only used to physically expand the service area of the associated establishment, and does not increase the permitted patron capacity.

3.3 Planning and Building Fees Bylaw Amendment

An expedited PPA process is proposed for the review of applications for on-site outdoor seating areas for cafes, restaurants and similar establishments, as well as outdoor display and retail sale accessory to commercial and industrial establishments. The minimum fee for a PPA application is \$280, per Schedule B of the Planning and Building Fees Bylaw. It is proposed that this fee be waived for temporary outdoor seating area, and accessory outdoor display and retail sale applications where the expansion of outdoor seating does not result in an increase in the

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establishments' patron capacity due to the Public Health Order restrictions associated with COVID-19.

In order to implement the fee waiver, it is recommended that the row relating to "Minimum Fee" under item (d) of Schedule B of the Planning and Building Fees Bylaw be amended as follows:

Minimum Fee, except Temporary Outdoor Uses (COVID-19 Measures) per below	\$280
Temporary Outdoor Uses (COVID-19 Measures, Zoning Bylaw, sections 6.26 and 800.4.2)	\$0

4.0 REVIEW PROCESS FOR TEMPORARY OUTDOOR SEATING AND TEMPORARY OUTDOOR DISPLAY AND RETAIL SALE DURING COVID-19 PANDEMIC

Following approval at the 2020 June 01 Council meeting of the pandemic reopening measures to support businesses, the Engineering Department has established an expedited process for reviewing Encroachment Permit applications for use of City streets, including sidewalks, as outdoor commercial spaces by adjacent businesses. Staff propose to use this process for the coordinated intake and review of applications for outdoor uses on both City and private property. Any proposal for the on-site expansion of outdoor seating area at cafes, restaurants, and similar food and beverage establishments, as well as accessory outdoor display and retail sale will be considered through a PPA application using this expedited inter-departmental review process.

5.0 CONCLUSION

The Zoning Bylaw and Planning and Building Fees Bylaw amendments proposed in this report further the City's support for businesses during the COVID-19 reopening process. It is recommended that Council approve the above proposed amendments and authorize the expedited bylaw readings and adoption processes outlined in Section 3.0 of this report.



E. W. Kozak, Director
PLANNING AND BUILDING

PS:tn

cc: Director Corporate Services
Director Finance
Chief Building Inspector
City Clerk

Director Engineering
Director Public Safety and Community Services
City Solicitor