

February 27, 2017

Mr. Mathieu Fleury
and
Mr. Keith Egli
Chair, Transportation Committee
110 Laurier Avenue West
Ottawa, ON K1P 2J1
Via email: Keith.Egli@ottawa.ca

Dear Councillor Egli, Councillor Fleury,

Transportation Committee March 1: Right-of-Way Patio Review

I am writing on behalf of the Lowertown Community Association (LCA) to express our serious concerns with the report on the Right of Way Patio Review and proposed By-law.

This report was only circulated on February 23. It reverses, with little or no explanation, several key recommendations made in a November 2016 report, which had been prepared following extensive public consultations last summer. We were pleased to have participated fully in those consultations last year, as did, presumably, other community associations. It also introduces issues that until now were not part of the review, including license fees and year-round patio operation. Even if the Committee does not accept all of our views on the report, the absence of any meaningful public consultation on several of its recommendations is reason enough to defer its consideration to a future meeting.

As well as our objection to the process, LCA has serious difficulties with several proposals insofar as they will impact visitors, residents and other businesses in Lowertown and specifically, the ByWard Market.

Extending the patio season

The November report recommended shortening the summer patio season so that it would run only from 1 April to 30 September. The current report proposes, with no explanation, extending operations year-round, including the winter season.

In some cases, winter patios make sense and some currently are operating successfully on private property in Lowertown. However, little consideration appears to have been given to the possible problems created on several small, narrow, crowded streets in the Market where summer sidewalk patios now operate. Among them are the obvious difficulties of snow removal. For example, while the By-law would allow the City to order removal of the patios on two hours' notice in the case of a snow emergency, in Lowertown these are often permanent or semi-permanent structures that cannot be easily moved. These unsightly, unused structures are

likely to sit unoccupied and vacant occupying space along the sidewalks during many months of the year since it may prove cheaper to leave them in place.

Patios on raised platforms

The November report recommended eliminating all raised platforms, except where needed to correct the steep slope of a sidewalk. This was based on the problems these often large and unsightly structures create for sidewalk maintenance, accessibility and their impact on the streetscape. The current report, without explaining why, apparently sees no problem. It proposes allowing them without any restrictions, beyond the basic accessibility requirements all businesses must comply with under provincial legislation in any event.

In the Market, these platforms not only are an obstacle for pedestrians and obstruct the streetscape. They also are used by bar owners to differentiate their businesses from their competitors. During the summer months, the patios are simply an extension of their business premises. Allowing these structures to be placed on sidewalks and streets as a “spot” patios and encouraging their operation year-round effectively will hand over to bar owners large parts of whole streets in the Market for their private use.

Audio Speakers

Currently audio speakers are prohibited on sidewalk patios. The November report noted the impossibility of enforcing the existing rules and proposed allowing them until 11:00pm. The proposed By-law will allow them, but only until 11:00 pm if the patio is near a residential or mixed commercial residential zone. The City’s noise By-law is left to deal with any problems.

The noise by-law is at best only a partial solution to the problem of noise from patios, both day and night time. The changes being proposed in the report will allow patio speakers to operate year-round, including on new “spot” patios. The problems of enforcement of the current rules in the Market for sidewalk and private patios, which are not covered by this review, is well documented. To simply expand the rules to allow the use of speakers without any consideration of strategies or new resources to enforce them is unfair to residents and irresponsible.

Pedestrian Clearway

The centrepiece of the review launched last spring was the proposal to establish for every street in the city a minimum 2 metre pedestrian “clearway” – a “well-designed, straight, continuous, unobstructed pathway for pedestrians” mapped out by special design teams. All existing patios on a given street would need to be redesigned to accommodate this clearway, not just meet the minimum accessibility requirements imposed by provincial legislation. A-frame advertising signs would be specifically prohibited.

The current report carries forward this concept, but is very short on specifics. A clearway will be required, but is not defined in the By-law. Improving the pedestrian environment had been the principal objective of the review initiated last spring. Instead, the report now states the objective is “to provide flexible design options for patios” and give owners “latitude to determine how best to configure their patio”.

The introduction of pedestrian clearways is especially important in Lowertown. Several very narrow streets in the Market are now crowded with outdoor sidewalk patios that do not provide a 2-metre space for pedestrians,

let alone anything resembling a straight, continuous unobstructed pathway running the length of the block. Accommodating a 2-metre pedestrian clearway likely will mean major changes, including the removal of one or more sidewalk patios, on several streets.

The report states that staff will work with owners “to determine how their patios can come into compliance” and prepare a report next year “to determine progress...in meeting the new By-law”. This implies far too much flexibility for existing permit holders. We would have preferred wording that makes it clear that compliance with the new By-laws will be mandatory of all existing, as well as new, permit holders, including in those situations where an existing patio may need to be redesigned, made smaller or even removed completely.

Proposed Action by the Committee

1. LCA is seeing some of these proposals, notably the year-round operation of these patios, for the first time. Others reflect changes to recommendations made in November for which little or no explanation has been provided. Given a lack of any meaningful public consultation on these proposals, LCA would prefer to see this item deferred to a future meeting. This would provide for an opportunity for further consultation to ensure that all the implications of some of these proposals have been adequately considered in areas such as Lowertown where their impact will be felt most.

2. If this is not possible, we would request that any decision by the Committee to approve the report to explicitly reflect the understanding that:

- All renewing permit holder will need to be in compliance no later than 1 April 2018 with new pedestrian clearway requirements – that is, a well-designed, straight, continuous, unobstructed pathway for pedestrians of not less than 2 metres. Existing patios, some of which may have been operating for many years, will not be “grandparented” beyond this date, and may need to be redesigned and possibly removed to come into conformity with the pedestrian clearway designed for their street segment.

- The introduction of the new By-law will be accompanied by the development of new strategies to ensure more proactive and effective enforcement of noise and other by-laws, including the requirement that patios near residential properties cease operations at 11:00 pm., to minimize day and nighttime nuisance for residents.

Thank you for your attention to this important matter before Committee March 1.

Yours sincerely,



Liz Bernstein.

cc. Members of the Transportation Committee
(via Rosemary Theriault: rosemary.theriault@ottawa.ca)