

**Report to/Rapport au :**  
**Transportation Committee**  
**Comité des transports**

**March 14, 2013**  
**14 mars 2013**

**Submitted by/Soumis par : Nancy Schepers, Deputy City Manager/Directrice municipale adjointe, Planning and Infrastructure/Urbanisme et Infrastructure**

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RIDEAU-VANIER (12)

Ref N°: ACS2013-PAI-PGM-0086

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**SUBJECT: OUTDOOR PATIO ENCROACHMENT – 297 DALHOUSIE STREET**

**OBJET : EMPIÈTEMENT POUR TERRASSE EXTÉRIEURE - 297, RUE DALHOUSIE**

**REPORT RECOMMENDATION**

**That Transportation Committee approve the application for a temporary outdoor patio encroachment at 297 Dalhousie Street as shown in Document 2.**

**RECOMMANDATION DU RAPPORT**

**Que le Comité des transports approuve la demande d'empiètement pour terrasse extérieure temporaire du 297, rue Dalhousie comme il est montré dans le document 2.**

**BACKGROUND**

The owners of Sopra Ristorante, located at 297 Dalhousie Street, propose the establishment of a seasonal outdoor patio on the Clarence Street road allowance abutting their property. As the location is within 30.0 metres of a residential zone, a community circulation was completed. In response to the circulation, staff received 10 objections from neighbouring residents. The majority of objections were concerning potentially high noise levels and insufficient sidewalk space abutting the proposed patio, should the application be approved. Staff and the Ward Councillor's office co-ordinated a public consultation meeting in an attempt to resolve the objections. Following the

consultation, objections from the neighbouring residents still remained and in accordance with the provisions of the Encroachment By-law, the matter must be tabled at Transportation Committee for final decision.

## DISCUSSION

The establishment of an outdoor patio at the location in question dates back to 1995. City records indicate that in the spring of 1995, staff received an application for an 18.6 m<sup>2</sup> outdoor patio. By-law provisions at the time prohibited the installation of any outdoor patio within 30.0 metre of a residential zone. This being the case, and keeping to the policy and procedures of the time, an automatic refusal was sent to the applicant. However, a waiver to the 30.0 m limiting distance By-law provision was sought by the applicant. On 20 April 1995, City Council considered the matter and approved a reduced 13.9 m<sup>2</sup> patio on a one year trial basis and imposed a patio closing time of 11:30 pm.

No records are available to verify if the patio was monitored between 1995 and 2004. However, as a result of the enactment of the post amalgamation Encroachment By-law in 2003, procedures were revised to ensure all outdoor patios on road allowance are inspected, on a yearly basis, to ensure compliance with By-law provisions and/or initial Council approval conditions. As a result of the 2004 inspection, the establishment of an outdoor patio abutting 297 Dalhousie Street was substantiated, with the patio operator at the time having enlarged the patio from 13.9 m<sup>2</sup> to 57.5 m<sup>2</sup>, apparently without approval, with the encroachment providing a 1.5 m unencumbered sidewalk. Staff worked with the patio owner in an attempt to bring the patio into compliance, but with a change of business operators, the patio ceased operation in 2006.

In October 2012, the current restaurant owners submitted an application for an outdoor patio with an area of 28.2m<sup>2</sup> hoping the application could be considered a renewal of the original 1995 approval. Due to the lapse in annual permits, between 2006 and 2012, and the increased patio area over and above the 13.9 m<sup>2</sup> originally approved by City Council, staff felt it was necessary to treat the application as a new application and conduct all required reviews and community circulations.

In keeping with the provisions stipulated in Section 66 of the Encroachment By-law, all residents, residential property owners, Community Associations, the Business Improvement Associations (BIA) and the Ward Councillor were circulated with a copy of the proposed plans for the outdoor patio. As a result, 10 objections were received from neighbouring residents and five parties indicating either support or “no objections” (comments are detailed in Document 1 “Circulation Comment Summary”. A petition against the patio was also independently produced and circulated by a neighbouring resident, with the objections mirroring those received by the formal City’s circulation for comments. As noted, the primary concern from the residents falls into two categories. First there is a concern with the potential increase in noise levels due to the proposed patio being too close to a residential property and second there is a concern related to the decrease in sidewalk width abutting the proposed patio.

While staff share the concern in regards to noise, the By-law provisions requiring the patio to be completely cleared of all patrons and restaurant staff by 11 pm, as well as the specific requirement of the installation of a 2.0 metre high noise barrier wall, at the end of the patio abutting the residential property at 145 Clarence Street will adequately address the noise concerns. It should also be noted that staff review any and all noise complaints related to the use of outdoor patios, with the General Manager, Planning and Growth Management having the authority to immediately revoke any permit in cases of unresolved noise complaints.

In regards to the sidewalk abutting the patio, Schedule "C" of the Encroachment By-law would technically require a minimum unencumbered width of 2.4 metres for this, and all patios on City Road Allowance. However, given the numerous and competing demands for the use of the City's sidewalks, and given Council's desire to assist restaurant owners by the promotion of sidewalk patios, the adherence to the 2.4 metre minimum sidewalk width abutting an outdoor patio is unworkable. Strict adherence of the prescribed minimum would prevent approval of any new patio and would require the removal of most, if not all, existing sidewalk patios. In order to balance the encroachment of a sidewalk patio versus the provision of adequate unencumbered sidewalk width for pedestrian use, staff recommend a 1.8 metre minimum which corresponds to the City's minimum standard for new sidewalks being constructed by the municipality, as well as the desirable minimum width as stipulated in the City's Accessibility Design Standards. Further, a review of recent studies, such as those undertaken in preparation for the Light Rail Project have highlighted that given the pedestrian counts at the location in question, a 1.8 metre unencumbered sidewalk would provide the second highest level of pedestrian service. This level defined as "occasional need to adjust path to avoid conflicts" and an increase to a 2.4 metre unencumbered sidewalk width would provide the identical pedestrian level of service.

In order to resolve the concern of insufficient sidewalk space the applicant has agreed not only to the 1.8 metre unencumbered sidewalk along Clarence Street but also to an unencumbered sidewalk width of 2.7 metres for pedestrian pooling at the corner of Dalhousie Street and Clarence Street.

Given that the patio will be required to be completely vacated at 11 pm each night; the unencumbered sidewalk width abutting the patio conforms to the City's Accessibility Design Standards and provides a more than adequate level of service, and as the proposal appears to conform to all other By-law provisions related to outdoor patios; staff is recommending the approval of the outdoor patio permit application as per the plan illustrated in Document 2, "Plan Drawing of Proposed Outdoor Patio", with the condition that a 2 metre high noise barrier wall along the rear of the patio abutting 145 Clarence Street, conforming to current Zoning By-law standards, is constructed.

### RURAL IMPLICATIONS

There are no rural implications associated with this report.

## CONSULTATION

In accordance with the Encroachment By-law 2003-446 Section 66, the proposed outdoor patio is within 90.0 metres of a residential zone, thus requiring a community circulation. The circulation was provided to residents, residential property owners, the BIA and the local community association on 30 August 2012. In order to address outstanding objections, staff and the Ward Councillor's office held a public consultation meeting 16 October 2012 for those who submitted an objection to the proposal.

## COMMENTS BY THE WARD COUNCILLOR

The Ward Councillor is aware of this report.

## LEGAL IMPLICATIONS

There are no legal impediments to implementing the recommendation in this report.

## RISK MANAGEMENT IMPLICATIONS

No risk management implications have been identified for this report.

## FINANCIAL IMPLICATIONS

There are no direct financial implications associated with the approval of the encroachment. In the event that the encroachment is not approved, a loss of encroachment revenues would occur; affecting Planning and Growth Management's operating status.

## ACCESSIBILITY IMPACTS

The installation of the proposed patio will not impact the existing sidewalk and will provide an unencumbered width for pedestrians of 1.8 metres, which is recommended minimum as stipulated in the City's Accessibility Standards.

## ENVIRONMENTAL IMPLICATIONS

No environmental implications have been identified for this report.

## TECHNOLOGY IMPLICATIONS

Information Technology approved this report without comment.

## TERM OF COUNCIL PRIORITIES

No impact to the City Strategic Plan has been identified for this report.

SUPPORTING DOCUMENTATION

Document 1 Circulation Comment Summary

Document 2 Plan Drawing of Proposed Outdoor Patio

DISPOSITION

Staff in the Right-of-Way By-law will implement the Transportation Committee's decision.

**CIRCULATION COMMENT SUMMARY –**  
**297 DALHOUSIE STREET**

DOCUMENT 1

<b>Date Received</b>	<b>Complaints/Objections</b>	<b>Resolution</b>	<b>No Objections</b>
5 September 2012	- Too close to a residential zone	- Condition of 11pm close - Sound barrier wall built to limit noise	
6 September 2012			- Appreciates what the owner is doing for the neighbourhood - Enjoys having a place to go to close to her residence
6 September 2012	- Too close to a residential zone	- Condition of 11pm close - Sound barrier wall built to limit noise	
7 September 2012	- Too close to a residential zone - Noise levels - “pushing the development envelope”	- Condition of 11pm close - Sound barrier wall built to limit noise	
10 September 2012	- Too close to a residential zone - Music travelling from inside – causing high noise levels - High pedestrian traffic on the sidewalk	- Sound barrier wall built to limit noise - Leaving sufficient space at the corner of Dalhousie and Clarence (minimum 1.8 m)	
10 September 2012	- Noise levels (people and music) - High pedestrian traffic on the sidewalk	- Sound barrier wall built to limit noise - Sufficient pedestrian space will be provided	
10 September 2012	- Too close to a residential zone	- Condition of 11pm close - Sound barrier wall built to limit noise	
10 September 2012	- Proposed patio will not have a 2.4 m unencumbered	- Sufficient pedestrian space will be provided	

	<ul style="list-style-type: none"> <li>- sidewalk</li> <li>- High pedestrian traffic, and pedestrian pooling at the corner of Dalhousie and Clarence</li> <li>- Too close to a residential zone</li> <li>- Noise levels</li> </ul>	Sound barrier wall built to limit noise	
14 September 2012			- the BIA has no objections
14 September 2012	- The proposed patio would not be wheelchair accessible (ramp required)		
14 September 2012	- "no parking" sign along Clarence Street, does not provide a 1.8 m unencumbered sidewalk	- Will lift objection once the sign is removed or relocated	
21 September 2012	-	-	<ul style="list-style-type: none"> <li>- Creates jobs</li> <li>- Neighbourhood beautification</li> <li>- Petition being circulated to building at 145 Clarence re: wheelchair accessibility on sidewalk</li> </ul>
5 October 2012	-	-	<ul style="list-style-type: none"> <li>- Would like to remove her negative comments from the circulated petition (from building 145 Clarence)</li> <li>- She feels there are good things associated with this patio proposal</li> </ul>

10 October 2012	-	-	- Would like to remove her negative comments from the circulated petition (from building 145 Clarence)
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**PLAN DRAWING OF PROPOSED OUTDOOR PATIO**

