

**Pilon, Janet**

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**Subject:** Letter to Council re: Outdoor Dining Staff Report PED 22051

**From:** Nolan, Tim

**Sent:** Thursday, February 17, 2022 8:31 PM

**To:** [clerk@hamilton.ca](mailto:clerk@hamilton.ca)

**Subject:** RE: Letter to Council re: Outdoor Dining Staff Report PED 22051

Dear Clerk, I am sending this message on behalf of my wife Kim Nolan with hope this can be forwarded to Council as she is unable to send on her own behalf for reasons related to her disability and her ability to manage the forwarding process. Kim is copied should you wish to confirm with her my authorization to send on her behalf.

Tim for Kim Nolan

Dear City Council,

I write to Council as a Whole on behalf of myself as a member of the City's Advisory Committee for Persons with Disabilities. I would not normally reach out to Council in this way, but do so now because the matter before you is of significant importance with the full Council, collectively and simultaneously, receiving notice of my concern.

This brief correspondence is with respect to staff report PED22051 regarding the outdoor dining program, and the plan to make the temporary program permanent.

At the outset, please know I am not at all opposed to an outdoor dining program becoming permanent. I completely enjoy the opportunity to dine outdoors. I am not asking Council to scrap the program, rather, I ask Council to not rush to decision on this matter leaving accessible design of outdoor facilities in limbo. By rushing to decision on this matter now Council affirms that the meagre effort of staff to consult ACPD on this initiative, and any future staff report for that matter need only be superficial. A decision on this matter now by Council to adopt this program without reasonable and obligatory consideration for full accessibility sends a message to staff absolving them of any future obligation to consult ACPD meaningfully on matters affecting accessibility.

I respectfully request that Council rethink the support of the City's Planning Committee as follows:

1. Leave the temporary temporary outdoor dining program as is, until such time a permanent temporary program can be properly and fully integrated with full accessibility; and,
2. Refer staff and their report PED 22051 to the ACPD working group on Accessible Outdoor Spaces and Parklands so that a meaningful and effective collaboration on accessibility can be achieved before the permanent program is launched ; and,
3. Once City staff and ACPD can reach consensus on full accessibility for all outdoor dining then have staff report back in order to proceed.

Based upon the staff report, staff and other delegate feedback during the February 15, 2022 Planning Committee meeting I would like to rebut some of what was presented:

1 A university student cannot in any way be construed as an expert on accessibility and accessible design thereby absolving any BIA from consulting the City's Advisory Committee for Persons with Disabilities on accessibility and accessible design;

No BIA in this City has ever approached ACPD to gain information how to make outdoor dining accessible;

Program staff did consult ACPD but that consultation focused primarily on the procedure for application and barely at all on how to make outdoor patios accessible and how to prevent barriers to pedestrians with disabilities particularly where dining will occupy sidewalks and pathways;

Staff during their consultation with ACPD were asked to find ways to not impede travel and safe travel for persons with disabilities on City sidewalks yet this program and staff report provide no such design or mechanism to do so;

The staff report provides a statement with regard to compliance with the AODA, yet the AODA has no such specific regulations respecting outdoor dining. It makes good sense then that such standards be developed for the City of Hamilton in consultation with ACPD in order that the staff assertion be compliant before this program permanently moves forward;

The staff report deems legal implications of this program N/A not applicable. I would posit and respectfully bring to Council's attention that while there may be no individual regulations arising from the AODA specific to accessible outdoor dining, the Act itself requiring full accessibility and prevention of barriers to access is in scope. This program, in my opinion, should it proceed, is in contravention of the AODA in fact, and in spirit. Additionally, a Council decision to

proceed in defiance of accessibility, particularly given advice by ACPD of this fact, makes Council more liable should any complaint arise under the Ontario Human Rights Code. On this point alone, Council needs to refer this program to ACPD.

Additionally, the text or talking points guiding the ACPD presentation to the Planning Committee are provided below in support of this request to refer this program matter to the ACPD working group before proceeding to make this program permanent.

James Kemp and Tim Nolan on behalf of the ACPD.

I am here representing the Advisory Committee for Persons with Disabilities regarding the outdoor patio program being made permanent in the report (PED22051).

The ACPD respectfully requests that the Planning Committee and Council do not make the Outdoor Dining Districts Program permanent until our very reasonable accessibility issues have been addressed. Our concerns are as follows:

1. There is no accessibility trained person on the SEAT team that makes the decisions on whether these permits are approved. When accessible parking spaces are being relocated or encroached upon, or when access to sidewalks, curb cuts and ramps are going to be blocked, there needs to be someone on the team to represent those with disabilities and ensure that convenience isn't taking a priority to accessibility. This person could possibly report any issues to our committee on an annual basis.
2. We have serious issues regarding the sidewalk bypasses. Blocking the sidewalk creates a clear barrier to persons with disabilities in contradiction of the Ontarian's with Disabilities Act (ODA) which was put in place to ensure that we could participate fully in society. Of particular note:
  1. Urban Braille, designed to help those with visual impairments navigate the world safely, are directing pedestrians directly into the barricade.
  2. The barricades have no high contrast markings or signage warning those with visual impairments of the danger ahead. We were told that there would be a sign, but first, they would need to know the sign was there and two, they would have to be able to read it.

3. The wooden planking makes it painful and difficult to travel on for those using: walkers, white canes, canes, crutches, wheelchairs or power chairs.
4. There is often a lip where the planking transitions from the sidewalk. This can possibly puncture the pneumatic tires of mobility scooters, cause a tripping hazard or hook up a white cane.
5. Narrowing the flow of traffic prevents two wheelchairs or walkers, etc.... from passing safely or to prevent being jostled by passersby in the tight space.
6. Blocking the sidewalk and making us travel further distances signals to those with disabilities that we aren't really included or equal. Persons with disabilities begin avoiding the areas due to the difficulty and frustration of traversing them. Therefore, a barrier.

The ACPD met with staff on three occasions over the past year regarding this issue and we informed them of our concerns each time, yet none of those concerns made it into this report.

We also had two delegations from Susan Creer from Accessible Hamilton regarding her group's concerns about the Patio Program.

We have tried to learn if we were consulted before this program began in accordance with the AODA, but have found no evidence of it.

Planning Committee members I would like to speak to the points as outlined here and appreciate the opportunity to do so:

there are a good many obstacles on sidewalks these days which impede travel and safe travel for people with disabilities e.g. light posts, flower planters and flower planter posts, street sign posts, fire hydrants, mail boxes, bus shelters and bus sign posts, garbage cans and utility vault covers, and bike racks among so many others. Now people with disabilities must deal with dangerous e-scooters and restaurant patios. Where are we supposed to walk? Add to the issue the atrocious snow clearing in the winter and people with disabilities either travel only on the road or never get out. Is this the City that members of City Council envision for the future?

Furthermore, the City developed and adopted many years ago barrier – free pedestrian pathway guidelines to support persons with disabilities with unimpeded pathways of travel particularly in BIA districts. Any restaurant patios which encroach sidewalks are in contravention of previous City Council decisions and must not go forward, otherwise City Council will be in contravention of its own regulations.

The staff report before you respecting making temporary patio and sidewalk restaurants permanent peripherally mentions consultation with ACPD and compliance with AODA regulations, but the consultation with ACPD was primarily a presentation with little input to site design and the negative impact upon persons with disabilities should it go ahead. Additionally, AODA regulations respecting outdoor spaces has very little, if any, regulations respecting outdoor dining. In an effort to properly address this matter Council may wish to refer this report to the newly formed City staff and ACPD Working Group on Accessible Open Spaces and Park Lands through the ACPD where a resolution can be reached in full and complete discussion with persons with disabilities before proceeding further. ACPD was unable to affect outdoor dining when previously approved in 2016; we should not miss that opportunity now at the peril of creating a situation where we cannot make a change in the future due to unforeseen barriers and need for compliance with the spirit of the AODA.

Respectfully,

Kim Nolan