

The Corporation of the Town of Lakeshore

Report to Council

Community & Development Services

Development Services



To: Mayor & Members of Council

From: Kim Darroch, Manager of Development Services

Date: July 7, 2020

Subject: Temporary Outdoor Patios During COVID-19 Recovery

Recommendation

The site plan control agreement and associated fees until January 1, 2021 for the 2020 outdoor patio season be waived for outdoor patios, as authorized under section 69 of the *Planning Act*, as Council recognizes the financial hardships faced by the restaurant industry, as a result of the COVID-19 pandemic; and,

The Town of Lakeshore does not object to the temporary physical extension of liquor sales under section 97(2) of regulation 719 under the *Liquor Licence Act* for an outdoor patio located on private property that is permitted under applicable zoning by-law(s) in the Town of Lakeshore.

Background

As the Town of Lakeshore begins recovery efforts from the COVID-19 pandemic, the Province has initiated a process to allow for increased and streamlined operations of temporary outdoor patios in 2020. The move was intended to allow restaurant and bar operators to expand outdoor business areas to offset limitations on indoor dining under COVID-19 emergency orders.

The Province's intent is to help restaurant and bar owners expand their patios faster ahead of a planned Stage 3 reopening, as restaurants are currently only permitted to host dine-in guests on outdoor patios under Stage 2. Under stage 2, in addition to take-out and delivery options, restaurants, bars and food trucks will be able to open for outdoor dining on patios and in parking lots or adjacent premises.

To further help restaurant businesses, the Provincial government issued another emergency order regulation *O.Reg.345/20* recently, to help municipalities to quickly pass temporary bylaws allowing for the creation of new patios and the expansion of an existing one, to reduce the process time for passing bylaws from several weeks or more to a matter of days. It is not necessary for Council to pass these temporary by-laws in

Lakeshore, as outdoor patios are permitted in the Town of Lakeshore, as an accessory use, to a permitted eating establishment, in accordance with Zoning By-law 2-2012, as amended:

EATING ESTABLISHMENT – shall mean a building or part of a building where food is offered for sale or sold to the public for immediate consumption or take-out and includes such uses as a restaurant, café, cafeteria, ice cream parlour, tea or lunch room, dairy bar, coffee shop, snack bar, or refreshment room or stand. An outdoor patio may be included as an accessory use.

OUTDOOR PATIO – shall mean an area set aside out of doors, covered or uncovered for the use of patrons of a licensed eating establishment as an accessory use to the operation of an adjacent eating establishment.

O. Reg. 345/20 issued by the Province defines a “patio” as:

“restaurant or bar patio” means an area that is not an enclosed public place or an enclosed workplace and that meets the following criteria:

- 1. The public is ordinarily invited or permitted access to the area, either expressly or by implication, whether or not a fee is charged for entry, or the area is worked in or frequented by employees during the course of their employment, whether or not they are acting in the course of their employment at the time.*
- 2. Food or drink is served or sold or offered for consumption in the area, or the area is part of, or operated in conjunction with, an area where food or drink is served or sold or offered.*
- 3. The area is not primarily a private dwelling.*

This regulation allows for quick passage of a temporary use zoning by-law permitting the by-law to be passed by Council without public notice or public meeting requirements, as set out below:

2. A by-law that would authorize the temporary use of land for a restaurant or bar patio under section 39 of the Planning Act is exempt from subsections 34 (12) to (14.3), (14.5) to (15) and (19) of that Act and paragraphs 4 and 5 of subsection 6 (9) of Ontario Regulation 545/06 under that Act.

The Province also amended an emergency order to clarify that outdoor dining areas can open if they have a roof, canopy, tent, awning or other covering. At least two full sides of the outdoor dining area must be open to the outdoors and must not be substantially blocked in any way. If the outdoor dining area has a retractable roof, the roof must be fully open and at least one full side must be open to the outdoors and must not be substantially blocked in any way.

In addition, the Province outlined certain regulations for patios that must be met by operators and patrons, like outdoor patios must be open to the air, distance between

tables is 2 metres, allow for safe circulation of customers (*use of floor markers or other physical distance signage*), reservations etc.

Municipalities would still be responsible for compliance activities and ensuring proper health and safety practices, like proper physical distancing. In Lakeshore's case, administration would also rely on the expertise of the Windsor-Essex Health Unit to ensure health and safety practices are followed.

Comments

As many municipalities begin passing temporary use by-laws to temporarily permit outdoor restaurant patios, many are also establishing streamlined processes to review them for health and safety purposes.

Site Plan Control

The Town of Lakeshore, currently reviews outdoor patios through the site plan control process, as a minor application submission, currently delegated to Administration for review and approval.

The existing site plan protocol for reviewing outdoor patios, directs the Town to take quick action and make way for additional safe outdoor dining spaces for local restaurants and bars, which includes creating or expanding patios onto sidewalks and into curb lanes and adjacent parking lots. It is important for administration to review these proposals to ensure the health and safety of patrons including the review of fire routes.

Under the Temporary Outdoor Patios, during COVID-19 process, patios approved under this process, will only be authorized to operate until from July 15, 2020 to January 1, 2021.

Owners of bars and restaurants who wish to create or expand an outdoor patio will be asked to submit a site plan application and accompanying sketch, to comply with all applicable legislation and regulations, obtain the proper consents, and follow guidelines imposed through the Province (See Appendix 1).

Administration recognizes the financial hardships faced by the restaurant industry as a result of the COVID-19 pandemic and is recommending the fees for the 2020 patio season be waived.

Advice from the Medical Officer of Health to ensure the health and safety of all persons using sidewalk patios, curb lane/parklet patios or public parklets, with areas denoted for physical distancing purposes, will be sought by Administration, during their review of the application.

Once the application is approved by the Town and or the applicant has entered into an agreement with the Town, operators may open their patio, subject to inspections and

enforcement meant to ensure compliance with the requirements and provisions of applicable legislation.

If a patio is expanded onto the Municipally-owned Right of Way (sidewalk/boulevard), the applicant will also have to enter into an encroachment agreement, as part of the site plan agreement and with that agreement, agree to indemnify the Town against losses related to their use of the Right of Way and provide proof of insurance.

Liquor Licence

The Province of Ontario has announced new measures to extend the outdoor service of alcohol. A restaurant that has a current liquor licence and wishes to serve alcohol in an expanded area can do so without a temporary extension application to the *Alcohol and Gaming Commission of Ontario (AGCO)*. However, Licensees must meet certain criteria. Once they are again permitted to welcome patrons on-site and until January 1, 2021 at 3:00 a.m., liquor sales licensees who wish to temporarily extend the physical size of their existing licensed patio or to temporarily add a new licensed patio within the approved period, are authorized to do so, if the following criteria are met:

1. The physical extension of the premises is adjacent to the premises to which the licence to sell liquor applies;
2. The municipality in which the premises is situated has indicated it does not object to an extension;
3. The licensee is able to demonstrate sufficient control over the physical extension of the premises;
4. There is no condition on the liquor sales licence prohibiting a patio; and,
5. The capacity of any new patio, or extended patio space where the licensee has an existing licensed patio, does not exceed 1.11 square metres per person.

To minimize administrative burden for licensees, those who meet the above criteria are not required to apply to the AGCO or pay a fee to temporarily extend their patio or add a temporary new licensed patio.

Financial Impacts

If the application fee is waived, loss of revenue for a minor site plan application is \$1,770 and the loss of revenue for a minor site plan amendment application is \$1,181. This loss of revenue per application, is warranted for a temporary period, to address the financial hardships faced by the restaurant industry, as a result of the COVID-19 pandemic.

The minor site plan application fee is charged when there is no site plan agreement registered on title. The minor site plan amendment application is charged when there is an existing site plan application registered on title.

The waiver of fees will result in a negative variance in this revenue line item and contribute to the unfunded costs resulting from the COVID pandemic. Any variance will be reported on the quarterly variance reports.

Attachment(s): Appendix 1 – Temporary Outdoor Patio Checklist

Report Approval Details

Document Title:	Temporary Outdoor Patios During COVID-19 Recovery.docx
Attachments:	- Appendix 1 Temporary-Patio-Site-Plan-Checklist.pdf
Final Approval Date:	Jul 9, 2020

This report and all of its attachments were approved and signed as outlined below:

Tammie Ryall

Rosanna Pellerito

Kristen Newman

Tammie Ryall