

# Municipality of Lakeshore - Report to Council

## Community & Development Services

### Development Services



**To:** Mayor & Members of Council

**From:** Aaron Hair, Planner III

**Date:** February 22, 2021

**Subject:** Temporary Outdoor Patios authorized under the Re-opening Ontario Act for 2021

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### Recommendation

The site plan control agreement fees and the encroachment agreement fees be waived for the 2021 outdoor patio season be waived for outdoor patios, until January 1, 2022 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;

The Municipality of Lakeshore does not object to the temporary physical extension of liquor sales under subsection 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 Municipality of Lakeshore, as presented at the March 9, 2020 Council meeting; and,

That the necessary by-law be prepared.

### Background

To assist in municipal recovery efforts from the COVID-19 pandemic, the Province initiated a process to allow for increased and streamlined operations of temporary outdoor patios in 2020, which has now been extended into 2021. 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.

To further help restaurant businesses, the Provincial government issued emergency order regulation *O.Reg.345/20* in July 2020, 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 Municipality, 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.”*

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*“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**

### ***Site Plan Control***

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 Municipality 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 January 1, 2022.

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 site plan application fees for the 2021 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 site plan application is approved by the Municipality and/or the applicant has entered into an agreement with Lakeshore, 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 Municipality against losses related to their use of the Right of Way and provide proof of insurance.

Administration is in support of waiving the encroachment agreement fees as well.

### ***Liquor Licence***

In an effort to support businesses as they work to recover from the COVID-19 pandemic, the Alcohol and Gaming Commission of Ontario (AGCO) is authorizing eligible “By the Glass” licensees to temporarily extend or add a temporary physical extension of their licensed premises, until January 1, 2022 at 3:00 a.m.

Eligible “By the Glass” licensees do not need to submit an application to extend their licensed premises for the duration of 2021, provided they meet certain requirements.

To be eligible for a temporary patio extension under the AGCO’s 2021 patio policy you must have a valid “By the Glass” licence, be permitted to open for on-site consumption and must meet the criteria as set out below:

1. The physical extension of the premises is adjacent to:
  - a. the premises to which the licence to sell liquor applies; or
  - b. a dock to which the boat is attached and may include land adjacent to the dock; or
  - c. the licensed premises under the “By the Glass” licence;
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 licence prohibiting a patio;
5. The capacity of any temporary extension, allows for at least 1.11 square metres per person; and
6. In the case of “By the Glass” licensees, the sale and service of the wine, beer and/or spirits manufactured by the manufacturer within the physical extension of the premises is primarily aimed at promoting the manufacturer’s product and either providing an enhanced tourist experience or fulfilling an educational purpose.

If a business does not meet the above 2021 criteria and still wishes to apply for a temporary extension, the AGCO website provides the following additional information on how to apply.

A temporary extension allows a Liquor Sales Licence holder to extend the licensed area indoors or outdoors for events with the Registrar’s approval. In the case of a boat, licensees may apply to the AGCO for a temporary physical extension to their docked boat, subject to certain requirements.

- A temporary extension permits a licensee to sell and serve food and alcohol in the

expanded area for a period approved by the Registrar.

- An application must be submitted for approval 30 days in advance.
- The extension must be adjacent to existing licensed areas or in the case of a boat, adjacent to the dock to which the boat is attached or land adjacent to the dock.

### **Financial Impacts**

If the application fee is waived, loss of revenue for a minor site plan application is \$1,782 and the loss of revenue for a minor site plan amendment application is \$1,189. 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.

In 2020, there was 1 outdoor patio site plan application approved, with revenue lost to the Municipality in the amount of \$1,181.00.

### **Attachment(s):**

Appendix 1 – Temporary Outdoor Patio Checklist

### **Report Approval Details**

Document Title:	Temporary Outdoor Patios 2021.docx
Attachments:	- Appendix 1 Temporary-Patio-Site-Plan-Checklist.docx
Final Approval Date:	Mar 4, 2021

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

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